

# RULES OF COURTROOM CONDUCT

## DRAFT

### I. UNIFIED RULES:

1. **Be on time.** Where even a brief delay is inevitable, promptly communicate this fact to the court clerk. ( San Diego County Bar Association, hereinafter San Diego)
2. **Stand up.** Always stand when addressing the court; in the rarest of cases and for good cause, request the court to speak from a seated position. (San Diego)
3. **Stating your appearance.** Formally state your appearance, your name and the party you represent. (San Diego)
4. **Bi Civil.** Be courteous and respectful to the court. Civility should extend to courtroom attaches, counsel, parties, and witnesses. Vigorous advocacy and civility are in not inconsistent. (San Diego)
5. **Avoid Visual Displays of Pique.** Avoid frowns or gestures that could be construed as disapproval of the court or its rulings. (San Diego)
6. **Don't Privately Disparage the Judge or Jury.** Don't improperly blame or otherwise attack the court or jury to clients or witnesses when you receive an unfavorable result in an effort to absolve yourself of responsibility. (San Diego)
7. **No Authorized Ex Parte Communication With the Court.** Do not initiate ex parte communications with the court except as expressly authorized by court rules. Be particularly sensitive to not raising any pending matter with a judge in a social setting. (San Diego)
8. **Don't Assert Meritless Claims.** Don't permit yourself to be used as a foil for advancing meritless arguments or causes of action. (San Diego)
9. **. Time Constraints.** Recognize that the court has limited time to hear your matter. Be prepared to respond to a request for a time estimate , and be prepared to live with it. Make a good faith estimate. Be considerate of the court. Don't be greedy ("I want an hour") but don't short-change yourself. Once guidelines are given ("You have five minutes, counsel") make sure you comply. (There is a trend to imposing time limits for trials as well as motion hearings.) (San Diego)

10. **Address the Court, Not Your Opponent.** Address all remarks to the court (even those intended for your opponent). In rare circumstances where it is appropriate to address your opponent, be sure to obtain the court's advance permission to do so. However, in most cases the remark can, at least in form, be addressed to the court.
11. **Argue to the Court, Not With the Court.** Take the maxim "Attack the argument, not the speaker" one step further. Point out the defects in the other party's position or arguments, not the failings in the court's tentative opinion. It is rarely productive of any good to challenge the court's reasoning abilities. (San Diego)
12. **Don't Interrupt.** While this seems obvious, many lawyers interrupt the court. Similarly, with few exceptions (e.g., to interpose an objection), don't interrupt opposing counsel during argument. (San Diego)
13. . **Stop Arguing After the Court's Ruling.** Don't persist in arguing a point after the court has ruled on the point. Once the court has ruled, it is considered discourteous to continue to argue. For this reason, try to make all your arguments, if possible, before the court rules; occasionally, a ruling is made before you complete getting what you wanted to get on the record, and appropriate explanatory remarks are required before you proceed. (San Diego)
14. . **Avoid Visual Displays of Pique.** Avoid frowns or gestures that could be construed as disapproval of the court or its rulings. (Some lawyers may even be unaware they are manifesting displeasure, learn to control what messages your expression and body language are sending.) Proper respect doesn't allow you to demonstrate your disapproval of a ruling with either word or gesture. Have some sort of a response (even when you have just had a dagger planted between your shoulder blades) that smooths over the harm (e.g., "Very well, Your Honor") and move on to the next order of business. Don't forget that you will be before this judge on another day. (San Diego)
15. **Be Properly Attired.** The courtroom is not the place to "make a statement" with unorthodox or casual attire. (San Diego)
16. . **Don't Attack Opposing Counsel.** Demonstrating unpleasant feelings toward opposing counsel by disparaging remarks or gestures will usually damage you in the court's eyes and will usually invite (or escalate) a counter-attack. At a minimum, engaging in personal attacks will distract the court from the points you need to make. If your opponent attacks you, meet your opponent's unreasonable conduct with dignity and reason. (San Diego)
17. In their relationship with judges, all attorneys shall:
  - a. strictly respect the independence and the impartiality of judges; particularly they shall neither cast doubt on judicial decisions nor hinder their execution, except where they are exercising their rights of appeal or invoking some other procedure in accordance with the law;

- b. be objective and fair during court proceedings;
  - c. refrain from publicly criticizing judges in an inappropriate manner. ( Kosovo's Code of Ethics and Professional Conduct for Prosecutors, Part II, Section A, para 7)
18. **Professional conduct of Counsel.** Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings. (International Criminal Court's Resolution – ASP/4/Res.1, Code of Professional conduct for counsel, Art. 7, hereinafter ICC code)
19. **Communication with the Chambers and judges.** Unless the judge or the Chamber dealing with a case permits counsel to do so in exceptional circumstances, counsel shall not:
- a. Make contact with a judge or Chamber relative to the merits of a particular case other than within the proper context of the proceedings; or
  - b. Transmit evidence, notes or documents to a judge of Chamber except through the Registry. (ICC code, art. 23)
20. **Duties towards the Court.** Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous. (ICC code, art. 24, section 3)
21. **Evidence.** Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect. (ICC code, art. 25, section 1)
22. **Relations with other counsel.** In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously. (ICC code, art. 27, section 1)
23. **Relations with persons already represented by counsel.** Counsel shall not address directly the client of another counsel except through or with the permission of that counsel. (ICC code, art. 28)
24. **Relations with witnesses and victims.** Counsel shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom. (ICC code, art. 29, section 1)

25. Counsel shall have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled. (ICC code, art. 29, section 2)
26. **Rules of Conduct in Court.** A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal. (Code of conduct of European Lawyers, art. 4.1.)
27. Court is called into session and the session is terminated by the Case Manager in attendance in the courtroom. At the instant that court is called into session and the gavel has been sounded, all talking and moving about in the courtroom will stop and attention will focus on the Judge's opening remarks. (Savanah City, Georgia, Rules of Court)
28. **Lawyer and Court:**
- a. A lawyer who appears or participates in a court/tribunal case either in Georgia or in a foreign country shall observe and respect the rules of conduct of that court/tribunal.
  - b. A lawyer must not make contact or meet with the judge on a pending matter without agreement with the lawyer for the opposing party, unless it is permitted by the relevant rules of procedure.
  - c. A lawyer shall not knowingly give false evidence to the court.
  - d. The rules governing a lawyer's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions. (Georgian Ethics Code of Advocates, Art. 9)
29. **Relations with the participants of criminal case/procedure:**
- a. A prosecutor is obliged to be guided by the present Code, internal norms and standards, in order to ensure ethical and professional conduct towards other participating parties of the criminal case.
  - b. A prosecutor, on the pre-trial and trial stages, is required to refrain from the communication with the judge with professional as well as personal motives (except of on the actual hearing stage), appear at the court hearing on time, follow the official dressing style in the court, refrain from any insulting and humiliating action or remark, from expressing excessively positive or negative attitude toward other participants of the trial and from expressing his personal attitude about the case. (Georgian Code of Ethics for Prosecutors, Art. 15)
30. **The prosecutor in a criminal case shall:**
- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

31. When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction. (ABA Model Rules of Professional Conduct, Rule 3.8))

## **II. RULES FOR JUDGES**

32. Court and court Procedure.

a. A judge shall remain calm, composed and dignified in his or her work.

b. A judge shall be patient and polite with all participants in proceedings, colleagues and court employees, requiring the same attitude from others.

c. A judge shall be impartial and fair upon administration of justice and shall try to appear as such to a reasonable observer. For that purpose a judge shall treat participants in the proceeding equally, shall refrain from unnecessary and irrelevant comments or remarks. He or she shall avoid becoming irritated, getting angry, rising his or her voice, facial expression and body language revealing attitude, and other such behavior that could leave the impression of partiality.

- d. A judge shall resolve cases in reasonable time, avoiding hurrying and superficiality and refraining from delaying decision-making on formal and unreasonable grounds. A judge shall not allow the participants in a proceeding to abuse their rights or delay proceedings. (Estonian Judges' Code of Ethics, sections 12-15)
33. A judge shall show availability and respect for individuals, be patient, dignified and courteous to litigants, defendants, witnesses, lawyers, prosecutors other judges and lay-judges and any third party with whom he/she deals in his/her official capacity, and should require reciprocity from lawyers, staff and court officials, and others with whom he/she may come in contact during the court proceedings or who are subject to his/her direction and control. ( Kosovo's Code for Judges, para 9)
34. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control. ( The Bangalore Principles of Judicial conduct, Value 6, section 6.6 )
35. In the performance of judicial duties a judge shall avoid words or conduct manifesting bias or prejudice and shall not allow staff, court officials and others subjects to the judge's direction and control to do so. (Kosovo's Code for Judges, Para 8)
36. Except in cases provided by law, a judge shall avoid and discourage *ex-parte* communication. Upon occurrence of such communication the judge has to disclose promptly the relevant information to the other parties involved and, when possible, procure their attendance. (Kosovo's Code of Ethics and Professional Conduct for Judges, Part III, section A, para 7)