

# Ethics & Legal Writing

**Moderator:** Hon. Thomas Donnelly, Associate Judge, Circuit Court of Cook County, Chicago, Illinois

**Panelists:** Hon. Kem Frost, Chief Justice, Court of Appeals for the 14<sup>th</sup> District of Texas

Dennis Rendleman, Ethics Counsel, Center for Professional Responsibility, American Bar Association

Kevin Hopkins, Professor, The John Marshall Law School



**“When you say ‘ethical’ do you mean marginally ethical, semi-ethical, or appearing to be ethical?”**

# Basic Principles for Effective Legal Writing

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1. Write well, accurately, and concisely.
2. Strive to promote justice, fairness, and morality.
3. Be civil and avoid personal attacks.

# Several of the Most Common Ethical Problems in Legal Writing

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1. **Citations:** The failure to use proper citation form, signals, pinpoint cites, and appropriate parentheticals.
2. **Adverse Authorities:** The failure to inform the Court of relevant adverse authorities.
3. **Unpublished Decisions:** The improper use of unpublished decisions
4. **Writing:** Recycling old documents and problems with using quotations.
5. **Appellate Brief Writing:** Using facts that are not in the record.

# A Few Consequences for Violating Ethical Standards

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1. Sanctions
2. Reprimands (Both Public and Private)
3. Loss of Credibility (Court and Bar)



# ATTORNEY ETHICS IN WRITING

# Attorney Ethics In Writing

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1. Attorney Ethics in Writing
  - a. The Citation of Legal Authorities
    - i. Using Signals, Parenthetical Information, and Pinpoint Citations
    - ii. Informing the Court of Relevant Case History (e.g. reversed, overruled, restricted...)
    - iii. Recent v. Older Case Law: Determining Which is Better
    - iv. Citing to Headnotes

# Attorney Ethics in Writing

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1. Attorney Ethics in Writing
  - a. The Citation of Legal Authorities
    - i. Using Signals, Parenthetical Information, and Pinpoint Citations

# Signals

- a. “Signals” can be used to:
  1. indicate support for a position taken or advocated in legal writing;
  2. to suggest a useful comparison of the sources and authorities cited;
  3. to indicate a contradiction in the authorities cited; or
  4. to highlight the use of additional background materials related to a position or proposition.

# Signals

(The Bluebook: A Uniform System of Citation (20<sup>th</sup> ed. 2015)).

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## Rule 1.2:

1. *Accord* “Accord” is commonly used when two or more sources state or clearly support the proposition, but the text quotes or refers to only one; the other sources are then introduced by “accord.” Similarly, the law of one jurisdiction may be cited as being in accord with the law of another.

# Signals

(The Bluebook: A Uniform System of Citation (20<sup>th</sup> ed. 2015)).

2. *See* Cited authority clearly supports the proposition. “See” is used instead of “[no signal]” when the proposition is not directly stated by the cited authority but obviously follows from it....
  
3. *Cf.* Cited Authority supports a proposition different from the main proposition but sufficiently analogous to lend support....

# Attorney Ethics in Writing

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## b. “Parenthetical Information”

# Parenthetical Information

## Rule 1.5:

Use parentheticals, as needed, to explain the relevance of a particular authority to the proposition given in the text. Parenthetical information is recommended when the relevance of a cited authority might not otherwise be clear to the reader (see rule 1.2). Explanatory information takes the form of a present participle phrase, a quoted sentence, or a short statement that is appropriate in context.

THE BLUEBOOK: A UNIFORM SYSTEM OF  
CITATION RULE 1.5 (20<sup>th</sup> ed. 2015).

# Attorney Ethics in Writing

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- c. Pinpoint Cites (e.g. “Pincites”)

# Pinpoint Cites

Effective legal writing requires that you point your reader to the specific pages within a cited authority that relate to a specific rule, argument or legal proposition relevant to an issue or point of law raised in your writing or document (e.g. motions, memorandums of law, briefs, etc.).

# Pinpoint Cites

To point your reader to the specific pages that relate to [a] cited proposition, [such as a case, book, or periodical] you must ... include a pinpoint citation, often called a “pincite.” Place pincites after the page on which the case report begins, separated by a comma....

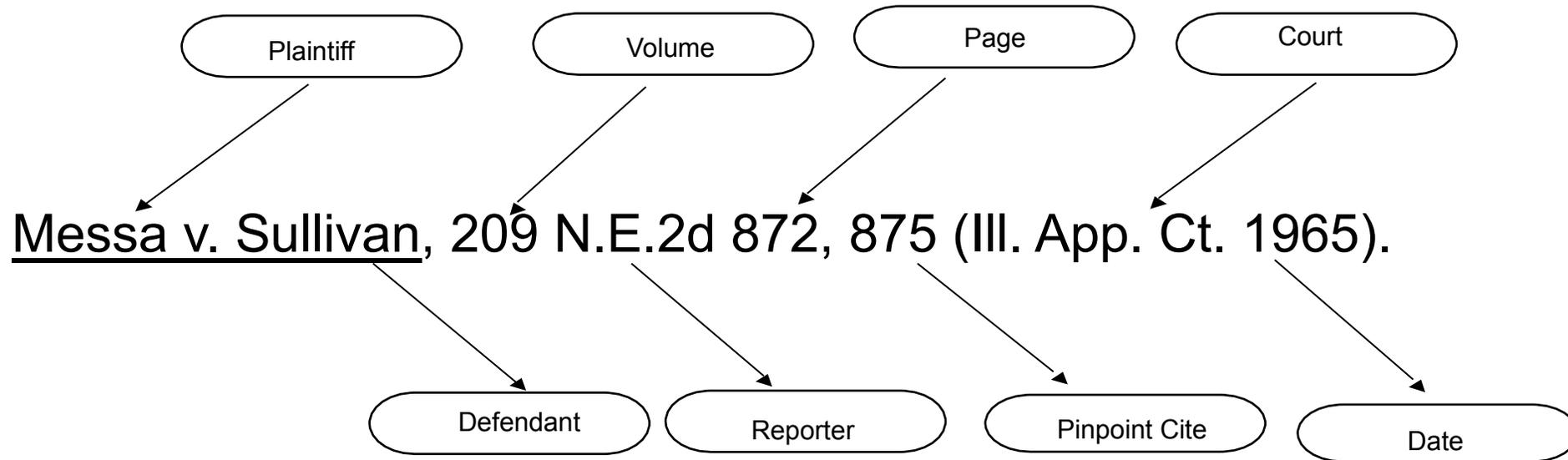
THE BLUEBOOK: A UNIFORM SYSTEM OF  
CITATION RULE B10.1.2 (20<sup>th</sup> ed. 2015).

# PINPOINT CITES

The Bluebook: A Uniform System of Citation  
(20<sup>th</sup> ed. 2015).

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## 1. Cases (Rule 10).



# Attorney Ethics In Writing

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1. Attorney Ethics in Writing
  - a. The Citation of Legal Authorities
    - ii. Informing the Court of Relevant Case History (e.g. “reversed,” “overruled,” “restricted,”...)

# Informing the Court of Relevant Case History

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Never cite authority that has been “reversed, overruled, or restricted without informing the court of those limitations.” *Texas Standards of Appellate Conduct*, “Lawyers’ Duties to the Court,” 4.

# Informing the Court of Relevant Case History

## Rule 10.7:

Whenever a decision is cited in full, give the entire *subsequent* history of the case, but omit denials of certiorari or denials of similar discretionary appeals, unless the decision is less than two years old or the denial is particularly relevant....

Give *prior* history only if significant to the point for which the case is cited or if the disposition cited does not intelligibly describe the issues in the case....

THE BLUEBOOK: A UNIFORM SYSTEM OF  
CITATION RULE 10.7 (20<sup>th</sup> ed. 2015).

# Attorney Ethics in Writing

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1. Attorney Ethics in Writing
  - a. The Citation of Legal Authorities
    - iii. Recent v. Older Case Law: Determining Which is Better

# Recent v. Older Case Law

You should always use and cite to the most recent case law or authorities that are relevant and support your legal proposition unless:

- i. the specific language used in the earlier source is more precise and directly on-point; or
- ii. the recent sources and authorities consistently refer back to or quote directly from the earlier source.

# Recent v. Older Case Law

Bluebook Rule 1.6(c) provides a compromise position:

Alexander Morgan Capron, *Tort Liability in Genetic Counseling*, 79 COLUM. L. REV. 618, 643 (1979) (“[I]n Judge Cardozo’s classic statement, ‘The risk reasonably to be perceived defines the duty to be obeyed’....” **quoted in** Palsgraf v. Long Island R.R., 162 N.E. 99, 100 (N.Y. 1928))).

THE BLUEBOOK: A UNIFORM SYSTEM OF  
CITATION RULE 1.6(C) (20<sup>th</sup> ed. 2015).

# Attorney Ethics in Writing

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1. Attorney Ethics in Writing
  - a. The Citation of Legal Authorities
    - iv. Citing to Head Notes

J. H. BORLAND, Sr. and Sarah  
M. Borland  
v.

SANDERS LEAD COMPANY, INC.,  
a corporation.

77-283.

Supreme Court of Alabama.

Feb. 9, 1979.

Rehearing Denied April 6, 1979.

Owners of agricultural land sued lead company to recover for damage to their agricultural property by allegedly dangerous accumulation of lead particulates and sulfoxide deposits. The Circuit Court, Pike County, Terry L. Butts, J., rendered judgment for lead company, and landowners appealed. The Supreme Court, Jones, J., held that: (1) compliance with Alabama Air Pollution Control Act did not shield defendant from liability for damages caused by pollutants emitted from its smelter; (2) fact that because of its proximity to the lead plant plaintiffs' property had a higher value as commercial property than as residential or farm property did not bar recovery; (3) if an intrusion interferes with right to exclusive possession of property, the law of trespass applies but if the intrusion is to the interest in use and enjoyment, the law of nuisance applies; (4) for an indirect invasion to amount to an actionable trespass there must be an interference with plaintiff's exclusive possessory interest; (5) general rule that measure of damages is difference between value of the land before and after the trespass is subservient to underlying theory of damages, i. e., that plaintiff is entitled to an amount which will compensate him for actual damages sustained, and (6) a distinction exists between permanent and continuous trespass.

Reversed and remanded.

**1. Appeal and Error** ⇐1008.1(5)

In an ore tenus case the Supreme Court is precluded from altering a lower court's

findings unless those findings are clearly erroneous; however, such rule does not preclude reversal where the trial court erroneously applies principles of law involved.

**2. Nuisance** ⇐43

Compliance with Alabama Air Pollution Control Act did not shield lead company from liability for damages caused by pollutants, i. e., lead particulates and sulfoxide deposits, emitting from its smelter and settling onto plaintiffs' adjacent property, making it unsuitable for raising cattle or growing crops. Code of Ala.1975, §§ 6-5-120, 22-28-1 et seq., 22-28-23.

**3. Nuisance** ⇐43

Fact that because of its proximity to defendant's lead plant plaintiffs' property had a much higher value as commercial property than as residential or farm property did not bar recovery because of emissions of lead particulates and sulfoxides from defendant's plant, which emission settled on plaintiffs' property making it unsuitable for raising cattle or growing crops. Code of Ala.1975, §§ 6-5-120, 22-28-1 et seq., 22-28-23.

**4. Eminent Domain** ⇐11

There is no right of private condemnation.

**5. Nuisance** ⇐1

**Trespass** ⇐1

The same conduct on part of the defendant may result in actionable invasion of both a possessor's interest in exclusive possession of property and interest in use and enjoyment and, thus, may constitute both a trespass and a nuisance. Code of Ala.1975, § 6-5-120.

**6. Nuisance** ⇐4

**Trespass** ⇐1

Modern action for trespass to land stems from the common-law action which lay when injury was both direct and substantial; nuisance on the other hand, would lie when injuries were indirect and less substantial. Code of Ala.1975, § 6-5-120.

# Citing to Headnotes

1. The official opinion by the court is limited to the text that appears in the reported decision beginning after the name of the judge who authored the opinion.
2. The one or two-sentence headnote that appears between the case name and the beginning of the opinion are supplied by commercial publishing companies (e.g. Thomson-

West)

and are not a part of the official opinion.

# Citing to Headnotes

3. “Headnotes” are brief summaries of the court’s holdings on the specific issues raised in a case.
4. Do not cite to a Headnote for a legal proposition in a case. Always cite to the specific page in the text of the case where legal propositions, rules of law, or pertinent facts can be found. (Use pinpoint citations).

# Attorney Ethics in Writing

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- b. Disclosing Adverse Authority
  - i. The Duty to Disclose Relevant Authorities
  - ii. Dealing With Conflicts In The Case Law

# Attorney Ethics in Writing

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- b. Disclosing Adverse Authority
  - i. The Duty to Disclose Relevant Authorities

# Disclosing Adverse Authority

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An attorney is required to disclose adverse legal authority not disclosed by opposing counsel.

# ABA Model Rules of Professional Conduct

## Rule 3.3(a)(2)

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### Rule 3.3(a)(2)

#### *Candor toward the Tribunal*

(a) A lawyer shall not knowingly:

(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;...

# Attorney Ethics in Writing

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- b. Disclosing Adverse Authority
  - ii. Dealing With Conflicts In The Case Law

# Conflicts in the Case Law

- a. “Jurisdiction” is the term used to refer to the power of a court to render an enforceable decision in a case.
- b. Every court has jurisdiction over certain matters.
- c. In light of the size of a state or geographical area, there may be multiple courts that have jurisdiction over the same matters.

Example: the Circuit Courts for the various counties in Illinois (e.g. Cook, DuPage,

# Conflicts in the Case Law

- d. Attorneys often face the dilemma in determining the controlling precedent on an issue where the rulings of various courts, sitting at the same level and addressing the same issue, are split.

# Conflicts in the Case Law

## *A Few Basic Tips When Dealing with Conflicting Case Law*

1. If your case involves a state law issue, the controlling precedent will be from:
  - a. **The Highest Court of the State;**
  - b. **The Court of Appeals** (either the Court of Appeals sitting *en banc*, or the various circuit panels of the Court of Appeals);
  - c. **The Trial Court** where the case was filed;

# Conflicts in the Case Law

2. If your issue has been addressed by various courts on the same level (e.g. court of appeals, trial courts), then the precedent of the specific court where the case was filed will be considered controlling (e.g. “primary-mandatory” authority in your case).
3. Decisions from other trial courts or the various panels of the appellate courts will be “persuasive” authority (e.g. “primary- persuasive” authority in your case). Remember: Persuasive authority is not binding.

# Attorney Ethics in Writing

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- c. **The Use and Value of Unpublished Decisions**

# Unpublished Decisions

- i. Although many court decisions are reported and available for legal citation, courts sometimes issue “unpublished decisions.”
- ii. An unpublished decision is one that has been designated by a court as unavailable for citation and precedent.
- iii. This designation often occurs when a court decides that a specific ruling or decision has little or no precedential value.

# Unpublished Decisions

- iv. Courts may differ on whether an unpublished decision can be cited and used. Determine how the unpublished decisions are treated in your jurisdiction before using them.

Federal Rule of Appellate Procedure 32.1 prohibits a court from restricting the citation of recent unpublished decisions, as long as the party citing the unpublished case provides the opposing party with a copy of the decision, if the decision is not available in a publicly accessible data base.

See FED. R. APP. P. 32.1

# Unpublished Decisions

- v. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION RULE 10.8(1) (20<sup>th</sup> ed. 2015) for additional guidance on proper citation form for unreported court decisions).

# Unpublished Decisions

## *Concerns That Arise When Considering The Value of an Unpublished Decision:*

- i. **Utility.** The greater accessibility of unpublished opinions as a result of the computerization of court records.
- ii. **Fairness.** The fairness to attorneys of not being able to use an unpublished opinion when the decision is directly on point to the issue in a pending case. The designation of “unpublished” may not mean that the decision is unimportant.

# Unpublished Decisions

- iii. **The Abrogation of Judicial Responsibility.** Allowing a judge to disregard judicial duties and the responsibility of preparing opinions that are worthy of publication.
  
- iv. **Violation of Court Rules.** The disciplinary implications for knowingly disobeying a court rule. (See ABA MODEL RULES OF PROFESSIONAL CONDUCT RULE 3.4).

# Attorney Ethics in Writing

- d. The Ethics of Writing
  - i. Recycling Old Documents: The “Cut and Paste” Problem
  - ii. Using Quotations and Paraphrasing
  - iii. Misrepresentations of the Law and Inattention to Court Imposed Word Limits
  - iv. Typographical/Clerical Errors

# Attorney Ethics in Writing

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- d. The Ethics of Writing
  - i. Recycling Old Documents:
    - a. The “Cut and Paste” Problem



**“I’d like you to do a presentation on business ethics. If you don’t have time to prepare something, just steal it off the Internet.”**

# “Cutting and Pasting”

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## Example:

A lawyer is asked to prepare a document for Client A and later discovers that his [or her] law firm’s electronic brief bank contains a document previously prepared for a similar transaction. As a result, the lawyer simply pulls the document up on his computer terminal, modifies the previous document, changing names, dates and subject matter, **[or cuts and pastes portions of the previous document into the new document]**....

See Kevin Hopkins, *Law Firms, Technology, and the Double-Billing Dilemma*, 12 GEO. J. LEGAL ETHICS 95, 103 (1998).

# “Cutting and Pasting”

*A Few of the Problems that Often Arise When “Cutting and Pasting” materials include:*

- i. **Context.** Failing to ensure that the “cut and paste” materials are grammatically in sync with your context (e.g. proper verb tense), and relevant to the topic for which the materials are being used.
- ii. **Citation.** Failing to use proper legal citation and attribution when the materials involve the ideas, or specific language of another legal authority or source.

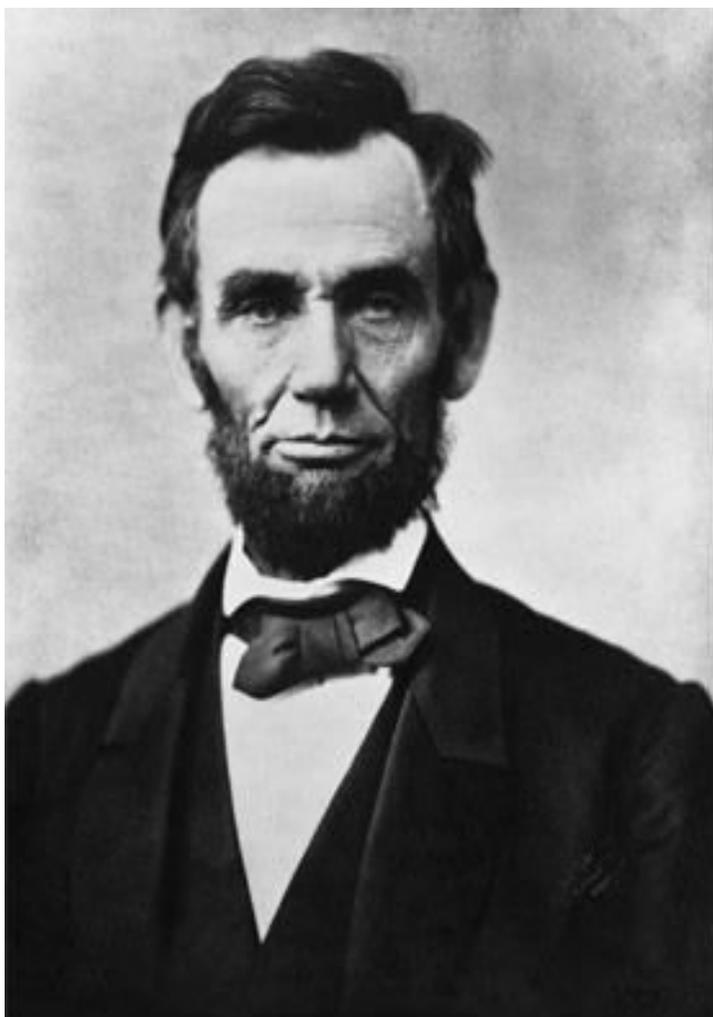
# “Cutting and Pasting”

- iii. **Updating Case Law and Authorities.** Failing to update cases, statutes, and authorities cited and relied upon in the “cut and paste” materials taken from the previous document.
  
- iv. **Billing.** Failing to recognize the problems that may occur with double-billing (see ABA MODEL RULES OF PROFESSIONAL RESPONSIBILITY RULE 1.5 (Fees)).

# Attorney Ethics in Writing

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- d. The Ethics of Writing
  - ii. Using Quotations and Paraphrasing



**“Don’t believe  
everything you  
read on the  
Internet just  
because there’s  
a picture with a  
quote next to it.”**

**—Abraham Lincoln**

WeKnowMemes

# Using Quotations and Paraphrasing

## *A Few Basic Tips When Using Quotations:*

- a. Quotation marks and proper citation to authority are always required when using the words or ideas of others.
- b. Use quotations “sparingly.” Paraphrase unless the specific quoted language is necessary and important (e.g. the text of a statutory provision).

# Using Quotations and Paraphrasing

- c. Do not quote from headnotes.
- d. Do not quote out of context.
- e. Be careful to quote accurately.
- f. Be careful to place quotation marks exactly where they belong.

# Attorney Ethics in Legal Writing

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- d. The Ethics of Writing
  - iii. Misrepresentations of the Law and Inattention to Court Imposed Word Limits

# ABA Model Rules of Professional Conduct

## Rule 3.3(a)(1)

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### Rule 3.3

#### *Candor toward the Tribunal*

- (a) A lawyer shall not knowingly:
  - (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;

# Misrepresentations of Law (General Rule)

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“Counsel should never misrepresent, mischaracterize, misquote, or miscite . . . legal authorities.” *Standards of Appellate Conduct, Lawyers’ Duties to the Court,*” 4.

# Examples of Misrepresentations

- a. Embellishing, misstating facts, or failing to disclose relevant facts or updated case law.
- b. Presenting a disputed fact as one that is “uncontroverted,” “undisputed” or “uncontracted.”
- c. Citing to the general rule but not the exception.
- d. Making frivolous arguments.

# How to Avoid Misrepresentations of the Law

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- i. Educate your audience on all applicable law – even opposing counsel’s
  - a. “The more unhappy a lawyer is that he found an adverse precedent, the clearer it is that he must reveal it.” Geoffrey Hazard & W. William Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct*.

# How to Avoid Misrepresentations of the Law

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- b. “Selective omission of. . . Relevant and apparently contradictory information exceeds the bounds of zealous advocacy.” *Montgomery v. City of Chicago*, 763 F. Supp. 301, 307 (N.D. Ill 1991).
- ii. Remember: You are educating the court on all applicable law

# Inattention to Court Imposed Word Limits (Failing to Obey Court Limits on Documents)

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## ABA Model Rules of Professional Conduct Rule 3.4

### *Fairness to Opposing Party and Counsel*

A lawyer shall not:

- (c) knowingly ***disobey*** an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;...

# Failing to Obey Court Limits on Documents

## *A Few Reminders When Preparing Court Documents:*

- i. Adhere to all applicable guidelines for court documents
- ii. Formatting tricks to avoid:
  - a. Trying to get around limits by using smaller fonts or smaller font size for footnotes.

# Failing to Obey Court Limits on Documents

- iii. Failing to obey court imposed limits for documents could cause a case to be dismissed. Frazier v Columbus Board of Education, 638 N.E.2d 581 (Ohio, 1994).

# Attorney Ethics in Writing

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- d. The Ethics of Writing
  - iv. Typographical and Clerical Errors

# Typographical and Clerical Errors

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## ABA Model Rules of Professional Conduct 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.

# Competence

Competence will include the following:

- i. knowledge of the applicable law for legal representation of a client's interest;
- ii. the ability and skill to perform basic legal research and writing;
- iii. the ability and skill to draft pleadings and documents correctly.

# Typographical Errors Can Cause Ethical Problems

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- i. Many typographical errors can have **legal consequences**.
  - a. Misplaced Commas - \$2,000,000 vs \$2,000.00 settlement
  - b. Unclear Writing and Ungrammatical Sentences

See Ky. Bar Assoc. v. Brown, 14 S.W.3d 916, 919 (Ky. 2000) (where the court suspended an attorney from the practice of law for drafting a brief on behalf of his client that was “a little more than fifteen unclear and ungrammatical sentences, slapped together as two pages of unedited text with an unintelligible message”).

# Attorney Ethics in Writing

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- e. Common Problems in Appellate Brief Writing
  - i. Using Facts That Are Not In The Record
    - a. Outside Facts v. The Record

*“Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”*

JOHN ADAMS, arguing in defense of the British soldiers involved in the Boston Massacre (December 1770).

# The Facts

The appellate court may consider only those facts in the record. See TEX. R. APP. P. 38.1(f); 38.1(h); 34.1; see also *Silk v. Terrill*, 898 S.W.2d 764, 766 (Tex. 1995).

An appellate court cannot consider documents attached as exhibits or appendices to briefs or motions that are not part of the appellate record. *Sewell v. Adams*, 854 S.W.2d 257, 259, n.1. (Tex. App. -- Houston [14th Dist.] 1993, no writ).

# Citations to the Record and to Legal Authority

1. Support your statement of facts with record references.  
See TEX. R. APP. P. 38.1(f).
2. The argument section of the brief must contain  
“appropriate citations to authorities and to the  
record.”  
TEX. R. APP. P. 38.1(h); see also *id.* 38.2(a)(1).
3. “A party should not refer to or comment on matters not involved  
in or pertaining to what is in the record.” Tex. R. App. Proc.

# JUDICIAL ETHICS IN LEGAL WRITING



“If you don’t believe me, Google it.”

# Judicial Ethics in Writing

## 2. Judicial Ethics in Writing

- a. Writing With Respect For the Parties  
(See ABA MODEL CODE OF JUDICIAL CONDUCT RULES 2.2, 2.3).
  
- b. Professionalism By The Court In The Treatment of the Facts, Law, and The Arguments Of A Case

# Judicial Ethics in Writing

## 2. Judicial Ethics in Writing

### a. Writing With Respect For the Parties

(See ABA MODEL CODE OF JUDICIAL CONDUCT RULES 2.2, 2.3).

# Writing With Respect For The Parties

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## ABA Model Code of Judicial Conduct Rule 2.2

### *Impartiality and Fairness*

A judge shall uphold and apply the law,\* and shall perform all duties of judicial office fairly and impartially.\*

# Writing With Respect For The Parties

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## ABA Model Code of Judicial Conduct Rule 2.3

### *Bias, Prejudice, and Harassment*

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

# Writing With Respect For The Parties

ABA Model Code of Judicial Conduct Rule 2.3 (b):

- (B) 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 based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation....

# Judicial Ethics in Writing

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## Example 1:

An excerpt of judicial writing that might be too informal and unnecessarily disrespectful.

People v. Shelton, 401 Ill. App. 3d 564, 567- 568 (1st Dist. 2010).

To paraphrase Tolstoy, happy litigants are all alike, but every unhappy litigant is unhappy in her own way. Most litigants express displeasure with the legal process in exceedingly civil ways. They might complain in private to their lawyer, vent with their family, or take it out on some unsuspecting store clerk. Some flash occasional signs of anger that might seem unsettling. A few allow their temperament to become deranged enough to cause disturbances during court proceedings and wind up in our correctional institutions. In this appeal, we consider the rather strident and entirely misplaced arguments of a habitually contumacious physician whose obstreperous conduct while on trial for Medicaid vendor fraud justly earned her some Cook County jail time for direct criminal contempt. The events that led to her confinement and the tragicomic happenings while in jail will be punctiliously elucidated below; but in a nutshell, she chose to use some of her jail time to physically confront a supervisor in the facility, which led to an indictment for aggravated battery, for which she received a two-year sentence in the Department of Corrections. She raises 18 meritless arguments in this *pro se* appeal from that conviction. We affirm.

People v. Shelton, 401 Ill. App. 3d 564, 567-68 (1st Dist. 2010).

# Judicial Ethics in Writing

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## Example 2:

An example of perhaps too clever writing.

U.S. v. Eickleberry, 22 F. Supp. 2d 885, 885  
(C.D. Ill. 1998).

# Judicial Ethics in Writing

“Enough is enough! Petitioner is entitled to his day in Court but not to someone else's day as well.”

United States v. Eickleberry, 22 F. Supp. 2d 885, 885  
(C.D. Ill. 1998).

# Judicial Ethics in Writing

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## 2. Judicial Ethics in Writing

b. Professionalism By The Court In The Treatment of the Facts, Law, and The Arguments Of A Case

# Judicial Ethics in Writing

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## 2. Judicial Ethics in Writing

b. Professionalism By The Court In The Treatment of the Facts, Law, and The Arguments Of A Case

# Texas Standards for Appellate Conduct

The “Texas Standards for Appellate Conduct” is a set of ethical rules adopted by the Texas Supreme Court. They are designed to assist practitioners and judges in modeling appropriate professional and ethical behavior while representing clients or presiding over cases in the Texas Courts.

# Texas Standards for Appellate Conduct

The Texas Standards for Appellate Conduct are aspirational and will not subject an attorney to disciplinary actions when violated. For example, the preamble to these standards states:

“Nothing in these standards alters existing standards of conduct under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure or the Code of Judicial Conduct.”

# Texas Standards for Appellate Conduct

## **i. The Court's Relationship with Counsel**

Unprofessionalism can exist only to the extent it is tolerated by the court. Because courts grant the right to practice law, they control the manner in which the practice is conducted. The right to practice requires counsel to conduct themselves in a manner compatible with the role of the appellate courts in administering justice.

# Texas Standards for Appellate Conduct

Likewise, no one more surely sets the tone and the pattern for the conduct of appellate lawyers than appellate judges. Judges must practice civility in order to foster professionalism in those appearing before them.

# Texas Standards for Appellate Conduct

1. Inappropriate conduct will not be rewarded, while exemplary conduct will be appreciated.
2. The court will take special care not to reward departures from the record.
3. The court will be ***courteous, respectful, and civil*** to counsel.

# Texas Standards for Appellate Conduct

4. The court will not disparage the professionalism or integrity of counsel based upon the conduct or reputation of counsel's client or co- counsel.
5. The court will endeavor to avoid the injustice that can result from delay after submission of a case.
6. The court will abide by the same standards of professionalism that it expects of counsel in ***its treatment of the facts, the law, and the arguments.***