IN THE SUPREME COURT OF THE STATE OF UTAH

----oo0oo----

In re: Proposed Rule 11-301
Utah Standards of Judicial Professionalism and Civility
of the GENERAL PROVISIONS to the
SUPREME COURT RULES OF PROFESSIONAL PRACTICE

ORDER

IT IS HEREBY ORDERED that the proposed Rule 11-301 titled Utah Standards of Judicial Professionalism and Civility of the General Provisions to the Supreme Court Rules of Professional Practice are adopted and promulgated effective May 1, 2015.

FOR THE COURT:

3-5-15
Date

Matthew B. Durrant
Chief Justice

Rule 11-301. Utah Standards of Judicial Professionalism and Civility.

Preamble

Judges are tasked with the important responsibility of presiding over adversarial judicial proceedings. In such proceedings the rights, responsibilities, liberties, and even lives of the parties may hang in the balance. And in light of these high stakes, conflict and tension are inevitable—to some degree even expected in a system that depends on an element of adversariness in the search for truth and justice.

Even in the adversary process, we expect the parties and their counsel to follow basic principles of civility and professionalism. In Utah, our Standards of Professionalism and Civility represent our attempt to articulate those principles for members of the Utah Bar. The standards below state a parallel set of principles for the judiciary.

Our judges should aspire to a high level of professionalism and civility in the performance of their judicial responsibilities. When judges display unprofessional or uncivil conduct, they undermine the goal of securing equal justice for all under the law. Conversely, when judges model civil and professional behavior, the system they preside over is elevated as all participants in the process are inevitably impacted by those who oversee it.

The general aspiration for professionalism and civility is only a beginning. That aspiration begs important questions regarding the nature of the judge's role in a system in which conflict and tension are inevitable and in which the judge may be called upon to make difficult determinations involving guilt, individual responsibility, credibility, state of mind, and relative culpability.

The aspiration for professionalism and civility in the judiciary must be tempered by the occasional need for a judge to stand up to obstinacy or insubordination with sharpness and even severity. In some instances a party's behavior or position cannot appropriately be dealt with through docility and good cheer. At times it will be the proper role of a judge, as the voice of the law in the face of a party's blatant disregard of it, to come down harshly. In a criminal proceeding involving a convicted child sex abuser who refuses to acknowledge responsibility, for example, a judge may properly find it necessary to utter the unmistakably grave terms of chastisement—with a goal of awakening the defendant to the need to seek help and make fundamental changes. Alternatively, in a juvenile court matter in which an abusive or neglectful parent is the root source of an adolescent's legal problems, a judge may determine that the only path to a lasting resolution of the matter is to employ the terms and tone of austerity. And judges generally are called upon to make determinations of credibility; that core responsibility cannot be shunned because it might have a tendency to offend.

The aspiration for professionalism and civility must also leave room for a range of personalities and temperaments among our judges. The judicial function is performed by individual human beings with discretion to apply the law to new facts. Judges must be permitted to do so in a manner consistent with their individual temperament and personality. Our standards are not intended to prescribe a single orthodoxy of temperament or personality.

The standards below seek to balance these competing objectives. They establish some bright lines that should never be crossed, regardless of a judge's temperament or personality and even in the most difficult circumstances. And they distinguish appropriate exercises of sharpness or severity (those with a due purpose in law, in the rules of procedure, or in the judge's efforts to maintain order and decorum) from those that are merely gratuitous (lacking any proper basis, and employed out of personal spite or animosity).

These standards are aspirational. They are not intended to prescribe legal standards to be invoked in litigation or as a basis for sanctions or penalties to be imposed against judges (except insofar as they may merely reiterate standards prescribed elsewhere that establish an independent basis for sanctions).

Standards

(1) Judges will refrain from manifesting or acting upon racial, gender, or other improper bias or prejudice toward any participant in the legal process.

(2) Judges will not use language in oral or written communications, orders, or opinions that is vulgar or profane (except to the extent necessary to describe the facts or background of a case) or that gratuitously demeans or humiliates an attorney, litigant, witness, or another judge, recognizing, however, that judges are sometimes expected to stand up to obstinacy or insubordination with sharpness and even severity, and that the difficult legal or factual determinations they make might produce a demeaning or humiliating effect on a participant in the judicial process.

(3) Judges will not disparage the integrity, motives, intelligence, morals, ethics, or personal behavior of an attorney, litigant, witness, or another judge except in circumstances where such matters are in furtherance of a judge's responsibilities or are otherwise relevant under the governing law or rules of procedure. Judges will not impugn the integrity or professionalism of any lawyer on the basis of the client or cause which the lawyer represents.

(4) Judges will avoid impermissible ex parte communications.

(5) Judges will not adopt procedures aimed at delaying the resolution of proceedings before them or at compounding litigation expenses unnecessarily.

(6) Judges will endeavor to begin judicial proceedings on time and to provide reasonable notice if necessary to apprise the parties, recognizing that circumstances beyond the judge's control may impact the goal of punctuality.

(7) Judges will give issues in controversy thoughtful and impartial analysis and consideration, recognizing the corresponding prerogative and responsibility to promote their just, speedy, and inexpensive resolution.

(8) Judges will recognize that a party has a right to a fair and impartial hearing, and a right to present its cause within the limits established by law. Judges will allow lawyers or parties, within reasonable time limits, to present proper arguments and to make a complete and accurate record.

(9) In all legal proceedings, judges will direct parties, attorneys, and other participants to refrain from uncivil conduct. Judges who observe uncivil conduct or receive a reliable report of uncivil conduct will take corrective action as the judge deems appropriate.

(10) Judges will cooperate with other judges to ensure the successful management of the court as a system as well as the judge's individual docket.