Oath Review and Drafting Task Force

Meeting Agenda
October 31, 2025 – 9:00 – 10:30 a.m.

In person: Washington State Bar Association
1325 Fourth Ave., Suite 600, Seattle, WA 98101-2539
Or remotely via Zoom:
https://wsba.zoom.us/j/82626951006?pwd=rH3hwi0SaabC1k9Huzlq9luw5V5bYk.1
Meeting ID: 826 2695 1006
Passcode: 863807

1. Introductions of Task Force members [Chair]
2. Orientation – Review of Charter – Overview of background materials [Doug]
3. Exploration of Perspectives [Members]
    - What motivated you to join the Task Force?
    - In what general ways do you think the current oath(s) could be improved?
4. Planning Ahead
    - Stakeholder engagement [Sara Niegowski]
    - Be prepared to discuss the following topics at our next meeting:
        a. What elements in the oath(s) would you like to keep?
        b. What elements in the oaths(s) would you like to remove or change?
        c. What elements are missing from the oath(s)?
        d. Are we missing any information? Is there a need for further research?
5. Administrative Matters
    - Work Plan
    - Target milestones
    - Meeting cadence
    - Quorum
    - Setting future meeting dates
    - Use of Teams Channel
    - WSBA AI Use Policy
    - Expense Reports
6. Adjourn

CHARTER

Oath Review and Drafting Task Force

Adopted: July 18, 2025.

Background

Oaths of legal practitioners in the state of Washington are found in Admission and Practice Rule (APR) 5. There is an Oath of Attorney, as well as corresponding Oaths for Limited Practice Officers (LPO) and Limited License Legal Technicians (LLLT).[1] Taking the oath is a preadmission requirement for each license type, and the oath, in most cases, must be taken in person, by telephone, or by videoconference before an elected or appointed judge sitting in the state of Washington.[2] The Oath of Attorney has been a component of the Admission and Practice Rules (formerly known as the Rules for Admission to Practice) since 1938. The oath adopted by the Supreme Court was based on the statutorily prescribed oath first adopted by the Washington Legislature in 1917, though language used in the oath appears to date back to Territorial laws enacted in 1863. The Oath of Attorney has been amended from time to time,[3] but much of the language that remains is derived from the statute. The Oath for LPOs was added to the APR in 2017, formerly appearing in the Regulations of the APR 12 Limited Practice Board; it was initially adopted in 1987 as part of the former Rules for Admission and Certification to Limited Practice. The Oath for LLLTs was adopted in 2012.

Task Force Purpose and Responsibilities

The Oath Review and Drafting Task Force is established to evaluate whether WSBA should suggest the Supreme Court amend Washington State's APR 5 oaths in ways that would update and reinvigorate them. Should the Task Force recommend amendment of the oath, it shall prepare draft amendments for the Board of Governors' consideration. In performing these responsibilities, the Task Force shall proceed according to the following objectives and guidelines.

- The Task Force shall communicate about its process with members and the public and seek input. The Task Force shall, in particular, obtain advisory perspectives from stakeholder groups with an interest in the content of the oath, including new and young lawyers; senior lawyers; the access-to-justice community; the judiciary; law schools and law students; Inns of Court; WSBA Sections; and county, affinity, and specialty bar associations.
- The Task Force shall gather and review historical materials about the development of Washington State's oaths, as well as perform a comparative analysis of the oaths in use by other jurisdictions.
- The Task Force shall consider whether it is advisable to consolidate the three existing oaths into one oath.
- The Task Force shall, in considering the content of the oath, recognize that violation of the oath can be a basis for discipline in Washington. See RPC 8.4(k); LPORPC 1.10(e); LLLT RPC 8.4(k).

[1] *See* APR 5(g), (h), (j).

[2] APR 5(f). Note that in June 2025, the Supreme Court adopted changes to the oath requirements in order to permit oaths to be taken by telephone or videoconference.

[3] For example, in the 1950s, the Oath included the following language: "I am not now and never have been a member of any organization or party having for its purpose and objective the overthrow of the United States government by force or violence." *See* Ralph S. Brown & John D. Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. CHI. L. REV. 480, 485 (1952-1953).

- The Task Force shall provide periodic updates to the Board of Governors about its progress.
- The Task Force shall ensure that its recommendations are consistent with WSBA's organizational parameters as defined in General Rule 12.2.
- The Task Force shall submit a final report to the Board of Governors, including, as appropriate, draft amendments to the oaths and related rules.

Timeline

The work of the Task Force shall be accomplished according to the following schedule:

- Begin meeting no more than six weeks after member and chair appointments are completed;
- Complete work and submit a final report not later than one year after the first Task Force meeting, unless the timeline for completion is extended by the Board;
- If the Board of Governors approves a recommendation to submit suggested amendments to the Supreme Court, prepare a set of suggested rule amendments and GR 9 materials for submission to the Supreme Court before the first GR 9 deadline after the draft amendments are approved.

Task Force Membership

The Task Force shall consist of the following voting members:

- An active WSBA member, not currently serving on the Board of Governors, who shall serve as Chair;
- Two current or former members the Board of Governors or WSBA officers;
- Six members of the WSBA, including at least one Limited Practice Officer or Limited License Legal Technician and a judicial member.

In recruiting and appointing voting members, consideration shall be given to diversity in a range of areas, including gender, ethnicity, disability status, sexual orientation, geography, areas of practice, and practice experience.

In accordance with WSBA Bylaws Art. IX(B)(2), selection of the chair and persons to be appointed to the Task Force will be made by the President with confirmation by the Board of Governors.

The Executive Director shall designate a WSBA staff liaison.

Meetings

The presence of a majority of Task Force members at a meeting constitutes a quorum. A quorum must be present at the time any vote is taken. Decisions of the Task Force shall be made by majority vote of members present at the time of the vote.

Washington State's Three Oaths (Attorney, Limited Practice Officer, Limited License Legal Technician)

APR 5(g) Contents of Oath of Attorney. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

2. I will support the constitution of the State of Washington and the constitution of the United States.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.

7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____

(signature)

Subscribed and sworn to before me this _____ day of _____, _____.

_____

_____

Judge

APR 5(h) Oath for Limited Practice Officers—Contents of Oath.

OATH FOR LIMITED PRACTICE OFFICERS

STATE OF WASHINGTON

COUNTY OF _____

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and Rule 12 of the Admission and Practice Rules and APR 12 Regulations adopted by the Washington State Supreme Court and will abide by the same.

2. I will support the constitutions of the state of Washington and of the United States of America.

3. I will abide by the Limited Practice Officer Rules of Professional Conduct and Rules for Enforcement of Limited Practice Officer Conduct approved by the Supreme Court of the State of Washington.

4. I will confine my activities as a Limited Practice Officer to those activities allowed by law, rule, and regulation and will only utilize documents approved pursuant to APR 12.

5. I will faithfully disclose the limitations of my services, that I am not able to act as the advocate or representative of any party, that documents prepared will affect legal rights of the parties, that the parties' interests in the documents may differ, that the parties have a right to be represented by a lawyer of their own selection, and that I cannot give legal advice regarding the manner in which the documents affect the parties.

I understand that I may incur personal liability if I violate the applicable standard of care of a Limited Practice Officer. Also, I understand that I have authority to act as a Limited Practice Officer only during the times that my financial responsibility coverage is in effect. If I am covered under my employer's errors and omissions insurance policy or by my employer's certificate of financial responsibility, my coverage is limited to services performed in the course of my employment.

_____

Signature

Subscribed and sworn to before me this _____ day of _____, _____.

_____

JUDGE

APR 5(j) Contents of Oath of Limited License Legal Technician. The oath that all applicants shall take is as follows:

OATH OF LIMITED LICENSE LEGAL TECHNICIAN

STATE OF WASHINGTON
COUNTY OF _____

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington, the laws of the United States, Rule 28 of the Admission and Practice Rules, and APR 28 Regulations adopted by the Washington State Supreme Court and will abide by the same;

2. I will support the constitutions of the State of Washington and of the United States of America;

3. I will abide by the Limited License Legal Technician Rules of Professional Conduct approved by the Supreme Court of the state of Washington;

4. I will confine my activities as a Limited License Legal Technician to those activities allowed by law, rule, and regulation and will only utilize documents approved pursuant to APR 28;

5. I will faithfully disclose the limitations of my services and that I am not a lawyer;

6. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court;

7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, _____.

_____
Judge

Prefix	First Name	Last Name	Member	Email	Member Type	Firm	Address	City	State	Zip	Position
	Rajeev	Majumdar	39753	rajeev@whatcomlaw.com	Lawyer	Whatcom Law Group PS	289 H St., Ste. A	Blaine	WA	98230	Chair
	Hunter	Abell	37223	habell@williamskastner.com	Lawyer	Williams Kastner	601 W Riverside Ave Ste 800	Spokane	WA	99201	Current or Former BOG Member
	Kyle	Sciuchetti	26264	[redacted]	Lawyer	Miller Nash LLP	500 Broadway St., Ste. 400	Vancouver	WA	98660	Current or Former BOG Member
Honorable	Rebecca	Glasgow	32886	j_r.glasgow@courts.wa.gov	Judicial	Washington Court of Appeals, Division Two	909 A Street, Ste. 200	Tacoma	WA	98402	At Large
	Roger	Wynne	23399	roger.wynne@seattle.gov	Lawyer	Seattle City Attorney's Office	701 5th Ave.. Ste. 2050	Seattle	WA	98104	At Large
Professor	Monte	Mills	61225	mtmills@uw.edu	Lawyer	UW School of Law	PO Box 353020	Seattle	WA	98195	At Large
	Courtney	Hudak	43840	[redacted]	Lawyer		PO Box 502	Renton	WA	98057	At Large
Honorable	James	Smith	35537	james.b.smith@clark.wa.gov	Judicial	Clark County District Court - Dept 3	1200 Franklin St.	Vancouver	WA	98660	At Large
	Angela	Balconi	9926LPO	angie.balconi@ctt.com	LPO	Chicago Title Insurance Company	3002 Colby Ave Ste 200	Everett	WA	98201	At Large
	Matthew	Dresden	39064	matthew@dresdenlaw.com	Lawyer	Dresden Law PLLC	2400 NW 80th St., Ste. 211	Seattle	WA	98117	BOG Liaison
	Doug	Ende		douge@wsba.org							Staff Liaison
	Rachel	Agent		rachela@wsba.org							Staff Liaison

SUMMARY OF THE HISTORY OF WASHINGTON STATE'S OATHS[1]

October 22, 2025

A. OVERVIEW

Washington State did not have an official Oath of Attorney until 1909. This statutory Oath, which was later recodified as part of the State Bar Act, was amended from time to time but persisted largely intact until its repeal in 2023. A version of the Oath nearly identical to the 1921 statutory Oath, was adopted by the Supreme Court as part of the Rules for Admission to Practice Law in 1954. The rules-based Oath, like the statutory Oath, was amended on occasion but has persisted largely intact. The Oath of Attorney found in Admission and Practice Rule (APR) 5(g) is currently the version administered to applicants seeking admission to practice law in Washington as a preadmission requirement. The Supreme Court adopted an Oath for Limited Practice Officers in 1987 and an Oath for Limited License Legal Technicians in 2012.

B. ADDITIONAL DETAIL

Washington's Territorial Legislature first enacted a statute defining the duties of an attorney in 1862; much of the language was drawn from a then-influential New York state statutory initiative known as the 1848 Field Code. The Territorial Legislature outlined seven duties for lawyers, including supporting the constitution, maintaining respect for the court, and preserving client confidentiality. These statutory duties remained on the books through statehood and were later codified in Washington's Code of Civil Procedure.

In 1908, the American Bar Association (ABA) launched a model oath, known as the Oath of Admission to the Bar, at approximately the same time as it was adopting the first nationwide model code of ethics, known as the Canons of Ethics (which was approved at the ABA's 1908 Annual Meeting in Seattle). It appears that the ABA's model oath was based in general on the statutory "duties of an attorney" first enacted by Washington's Territorial Legislature. Very soon after the ABA's adoption of a model oath, Washington's legislature adopted an Oath of Attorney in 1909, also largely based on the statutory duties of an attorney. A 1921 revision added a United States citizenship clause ("I am a citizen of the United States and owe my allegiance thereto"). The statutory oath was recodified as part of the 1933 State Bar Act, RCW 2.48.210, and eventually repealed by the legislature in 2023, having been superseded by court rule and identified by judicial officers as a "defect" or "omission."

[1] The research underlying this summary is based in part on an August 2025 legal research memo prepared by a law student intern with the Office of Disciplinary Counsel and in part on research shared with the Task Force staff liaisons by David Ward, Principal Legal Analyst at the Administrative Office of the Courts.

This document incorporates some content generated by artificial intelligence technology developed by Microsoft Copilot. The content was reviewed and edited for accuracy and context by Douglas Ende, a WSBA employee.

The Oath of Attorney was eventually adopted by the Supreme Court as a court rule in 1954 as part of the Rules for Admission to Practice Law in a form strikingly similar to the 1921 legislative Oath. There was one notable change: the 1954 court-rules-based Oath included language stating: "I am not now and never have been a member of any organization or party having for its purpose and object the overthrow of the United States government by force or violence."

In the 1970s, the Supreme Court adopted amendments to the Oath that removed the language declaring citizenship and allegiance, struck the "so help me God" clause, and deleted the declaration about not being a member of an organization or party with a purpose to overthrow the Unites States government. In the 1980s the Oath was amended to remove gendered language and to substitute "solemnly declare" for "solemnly swear." In 2013 the Oath was amended to make it gender neutral. The Oath for Limited Practice Officers was first adopted in the Regulations of the Limited Practice Board in 1987, and an Oath for Limited License Legal Technicians was adopted in 2012. All three oaths are now found in APR 5.

The 1909 Statutory Oath

Every person before being admitted to practise law in this state shall take and subscribe the following oath:

1. I will support the constitution of the United States and the constitution and laws of the State of Washington;
2. I will maintain the respect. due to the courts of justice and judicial officers;
3. I will not counsel or maintain any suit or proceedings which shall appear to be illegal and unjust except such as I believe to be honestly debatable under the law of the land;
4. I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth, and never seek to mislead the judge or jury by any artifice or false statement of fact or law;
5. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval;
6. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a fellow attorney, party or witness unless required by the justice of the cause with which I am charged;
7. I will never reject from any consideration of personal matters the cause of the defenseless or oppressed or delay any man's cause for lucre or malice, so help me God.

The 1954 Rules for Admission to Practice Oath

I do solemnly swear:

I am a citizen of the United States, and owe my allegiance thereto.

I will support the constitution of the United States and the constitution of the State of Washington; I am not now and never have been a member of any organization or party having for its purpose and object the overthrow of the United States government by force or violence;

I will abide by the Canons of the Professional Ethics approved by the Supreme Court of the State of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.

So help me God.

The current APR 5(g) Oath of Attorney

I _____ do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.
2. I will support the constitution of the State of Washington and the constitution of the United States.
3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.
4. I will maintain the respect due to the courts of justice and judicial officers.
5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.
6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.
7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

C. RECENT EFFORTS TO AMEND THE OATH

There have been two contemporary efforts to amend the Oath of Attorney, both suggested by the Washington State Bar Association, neither of which were adopted by the Supreme Court. In 2001 the Board of Governors suggested revising the oath "to make it more meaningful and contemporary." And in 2016, as part of an otherwise largely successful effort to coordinate the admissions rules for Washington's three license types, the WSBA suggested a revised oath "to make the oath applicable to all license types and change the title of the oath from "oath of attorney" to "oath for the practice of law."

The 2001 Suggested Oath

The judicial officer administering the oath reads as follows:

Do you accept the invitation of the Supreme Court of Washington to practice before the courts of this State, and solemnly promise:

1. that you will uphold the laws and Constitutions of the United States and of the State of Washington and support the principles of constitutional government;
2. that you will support the independence of the judiciary and help sustain its independence by assuring that adequate provision is made for its support;
3. that you will sustain the rule of law and help realize the promise of liberty for all by assuring equal access to justice for all;
4. that you will undertake representation of the oppressed, the defenseless, the disempowered, and the just cause, without regard for considerations personal to yourself, to the end that you make justice manifest and society just;
5. that, as an Officer of the Court, you will maintain the respect due the Court, its officers, staff and all persons appearing before it;
6. that, as a member of this honorable profession, you will abide by the Rules of Professional Conduct, both in letter and spirit, always tell the truth and never intentionally mislead by act or omission;
7. that you will faithfully represent your clients, maintain their confidences and preserve as inviolate their communications, pursuing their just causes by only such means as are consistent with truth and honor;
8. that you will strive at all times to adhere to the highest standards of professional and personal conduct, to advance and improve the justice system, to act in all ways in service to your clients and your community, and by so doing, be proud to be a lawyer and become a source of pride to the profession?

The individual(s) taking the oath will respond: Yes. I will. *[Should be repeated after each statement above.]*

Do you now, without equivocation, affirm your sincere and solemn commitment to the fulfillment of all of these promises, knowing that by so doing you bring honor to yourself, the greater community, and your profession?

The individual(s) taking the oath will respond: Yes. I do

The 2016 Suggested Oath

OATH FOR THE PRACTICE OF LAW

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.
2. I will support the constitution of the State of Washington and the constitution of the United States.
3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.
4. I will maintain the respect due to the courts of justice and judicial officers.
5. If there are limitations on my license to practice law, I will confine my activities to those permitted pursuant to my license to practice law and will faithfully disclose any limitations on my services.
6. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.
7. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.
8. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.
9. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Alabama			Alabama Code § 34-3-15 (2024) - Attorney to Take Oath. :: 2024 Code of Alabama :: U.S. Codes and Statutes :: U.S. Law :: Justia	"I do solemnly swear (or affirm) that I will demean myself as an attorney, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice and that I will support the Constitution of the State of Alabama and of the United States, so long as I continue a citizen thereof, so help me God."	1	81	0	0	1	0	1	0	1	0	0	0	0	0	0	1	0	81
Alaska			ALASKA BAR RULES	I do swear or affirm: I will support the Constitution of the United States and the Constitution of the State of Alaska; I will respect courts of justice and judicial officers; I will always be truthful and honorable in my practice of law; I will not aid anyone in formulating or pursuing claims or defenses that are asserted in bad faith or are unfounded in fact or law; I will never seek to mislead a judge, a jury, or another attorney by false statement or trickery; I will be candid, fair, and courteous to courts, attorneys, parties, and witnesses; I will not attack the honor or reputation of any person unless I am required to do so in order to obtain justice for my client; Except as authorized or required by the Rules of Professional Conduct, I will preserve the secrets of my clients, and I will not engage in conduct that might impair my loyalty to a client; I will uphold the honor and dignity of the legal profession; And I will strive to improve both the law and the administration of justice	0	174	1	1	1	1	0	1	1	0	0	0	0	0	0	0	0	174
Arizona			oath_of_admission	I, (Print Name) _____, do solemnly swear (or affirm) that I will support the constitution and laws of the United States andthe State of Arizona; I will treat the courts of justice and judicial officers with due respect; I will not counsel or maintain any action, proceeding, or defense that lacks a reasonable basis in fact or law; I will be honest in my dealing with others and not make false or misleading statements of fact or law; I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval; I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or tribunal; I will support the fair administration of justice, professionalism among lawyers, and legal representation for those unable to afford counsel; I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.	0	183	1	1	1	1	0	1	1	0	0	0	0	0	0	0	0	183
Arkansas			Arkansas Code § 16-22-205 (2024) - Oath :: 2024 Arkansas Code :: U.S. Codes and Statutes :: U.S. Law :: Justia https://opinions.arcourts.gov/ark/cr/en/item/1887/index.do#!fragment/zoupio-_Toc137804819/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYBmAdgA4ADABY+HAJwBKADTJspQhACKiQrgCe0AOSapEQmFwJlqjdt37DIAMp5SAIQ0AIAKIAZZwDUAggDkAws5SpGAARtCk7BISQA	I DO SOLEMNLY SWEAR OR AFFIRM: I will support the Constitution of the United States and the Constitution of the State of Arkansas, and I will faithfully perform the duties of attorney at law. I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them. I will, to the best of my ability, abide by the Arkansas Rules of Professional Conduct and any other standards of ethics proclaimed by the courts, and in doubtful cases I will attempt to abide by the spirit of those ethical rules and precepts of honor and fair play. To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications. I will not reject, from any consideration personal to myself, the cause of the impoverished, the defenseless, or the oppressed. I will endeavor always to advance the cause of justice and to defend and to keep inviolate the rights of all persons whose trust is conferred upon me as an attorney at law.	0	173	1	1	0	1	0	1	1	0	0	0	0	0	1	0	0	173
California			Attorney's Oath	OATH (to be taken before a Notary or other authorized administering officer): I, (licensee name) solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.	0	79	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	79
Colorado			Oath of Admission - Colorado Supreme Court	I DO SOLEMNLY SWEAR (OR AFFIRM) that: I will support the Constitution of the United States and the Constitution of the State of Colorado; I will maintain the respect due to courts and judicial officers; I will employ such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty; I will use my knowledge of the law for the betterment of society and the improvement of the legal system; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed; I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.	0	112	1	1	1	1	0	0	1	0	0	0	0	1	1	0	0	112
Connecticut			Chapter 4 - Oaths	You solemnly swear or solemnly and sincerely affirm, as the case may be, that you will do nothing dishonest, and will not knowingly allow anything dishonest to be done in court, and that you will inform the court of any dishonesty of which you have knowledge; that you will not knowingly maintain or assist in maintaining any cause of action that is false or unlawful; that you will not obstruct any cause of action for personal gain or malice; but that you will exercise the office of attorney, in any court in which you may practice, according to the best of your learning and judgment, faithfully, to both your client and the court; so help you God or upon penalty of perjury.	1	122	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	122

Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Delaware			10 Delaware Code § 1907 (2020) - Oath of attorneys-at-law. :: 2020 Delaware Code :: U.S. Codes and Statutes :: U.S. Law :: Justia	Title 10 - Courts and Judicial Procedure Chapter 19. General Provisions Applicable to Courts and Judges Subchapter I. Courts and Judges § 1907 Oath of attorneys-at-law. "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; that I will behave myself in the office of an attorney within the Court according to the best of my learning and ability and with all good fidelity, as well to the Court as to the client; that I will use no falsehood, nor delay any person's cause through lucre and malice."	0	98	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	98
Florida			Oath of Admission to The Florida Bar	I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.	1	225	0	1	1	1	0	1	1	1	1	0	1	1	1	1	1	225
Georgia			State Bar of Georgia Attorney Oath	" I (attorney's name), swear that I will truly and honestly, justly, and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God."	1	63	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	63
Hawaii			rsch_ada	I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai'i, and that I will at all times conduct myself in accordance with the Hawai'i Rules of Professional Conduct. As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals. I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.	0	112	1	0	0	0	0	1	1	0	0	0	0	0	0	0	0	112
Idaho			Attorneys-Oath.pdf	I, _____, subscribe to the following oath: "I Do Solemnly Swear That: (I do Solemnly Affirm That:) I will support the Constitution of the United States and the Constitution of the state of Idaho. I will abide by the rules of professional conduct adopted by the Idaho Supreme Court. I will respect courts and judicial officers in keeping with my role as an officer of the court. I will represent my clients with vigor and zeal and will preserve inviolate their confidences and secrets. I will never seek to mislead a court or opposing party by false statement of fact or law and will scrupulously honor promises and commitments made. I will attempt to resolve matters expeditiously and without unnecessary expense. I will contribute time and resources to public service, and will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed. I will conduct myself personally and professionally in conformity with the high standards of my profession. SO HELP ME GOD. (I hereby affirm.)"	1	171	1	1	1	1	0	0	1	0	0	0	0	1	1	0	1	171
Illinois			Illinois Constitution - Article XIII	"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of .... to the best of my ability."	0	39	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	39
Indiana			22. Oath of Attorneys	"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God."	1	216	0	1	1	1	0	1	1	1	1	0	1	1	1	0	1	216

Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Iowa			Iowa_Lawyers_Oath_6BBF4F22D2098.pdf	I swear or affirm: As an officer of the Court serving in the administration of justice, I will: • Support the Constitution of the United States and the State of Iowa • Perform to the utmost of my abilities and education • Maintain the respect due to the Courts and my colleagues • Faithfully and ethically discharge the duties required of Iowa lawyers As a zealous advocate and counselor for my client, I will: • Strive to be worthy of trust and respect • Counsel clients to maintain only those disputes supported by law and the legal process • Use only those means consistent with justice • Maintain the confidences of my clients as required by law • Support the cause of the defenseless or oppressed, pro bono publico As a member of the legal community, I will: • Strive to represent the legal profession as one of justice, honor, civility, and servic	0	140	0	1	0	1	0	1	1	0	0	0	0	0	1	0	0	140
Kansas			Rule 726: Oath of Admission - KS Courts	"You do solemnly swear or affirm that you will support and bear true allegiance to the Constitution of the United States and the Constitution of the State of Kansas; that you will neither delay nor deny the rights of any person through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the Supreme Court and all other courts of the State of Kansas with fidelity both to the Court and to your cause, and to the best of your knowledge and ability. So help you God."	1	132	0	0	1	0	0	0	1	1	0	0	0	0	0	0	0	132
Kentucky	Text as Ratified on: August 3, 1891, and revised September 28, 1891		ViewConstitution https://codes.findlaw.com/ky/kentucky-constitution/ky-const-sect-228/	I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of .... according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.	1	139	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	139
Louisiana			S0807TheLawyersOathPDF.pdf	I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.	1	238	0	1	1	1	0	1	1	1	1	0	1	1	1	1	1	238
Maine			Title 4, §806: Attorney's oath	"You solemnly swear that you will do no falsehood nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them that it may be prevented; you will not wittingly or willingly promote or sue any false, groundless or unlawful suit nor give aid or consent to the same; that you will delay no man for lucre or malice, but will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with all good fidelity, as well as to the courts, as to your clients. So help you God."	1	124	0	0	1	0	0	1	1	0	0	0	0	0	0	1	0	124
Maryland			§ 10-212 - Oath or affirmation for admission :: 2013 Maryland Code :: US Codes and Statutes :: US Law :: Justia	"I do solemnly (swear) (affirm) that I will at all times demean myself fairly and honorably as an attorney and practitioner at law; that I will bear true allegiance to the State of Maryland, and support the laws and Constitution thereof, and that I will bear true allegiance to the United States, and that I will support, protect and defend the Constitution, laws and government thereof as the supreme law of the land; any law, or ordinance of this or any state to the contrary notwithstanding."	0	86	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	86
Massachusetts			Massachusetts General Laws Chapter 221, Section 38 (2023) - Oath of Office :: 2023 Massachusetts General Laws :: U.S. Codes and Statutes :: U.S. Law :: Justia	I (repeat the name) solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; I will delay no man for lucre or malice; but I will conduct myself in the office of an attorney within the courts according to the best of my knowledge and discretion, and with all good fidelity as well to the courts as my clients. So help me God.	1	93	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	93

Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Michigan			Lawyer's Oath	I do solemnly swear (or affirm): I will support the Constitution of the United States and the Constitution of the State of Michigan; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except with my client's knowledge and approval; I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice; I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in this State.	0	234	0	1	1	1	0	1	1	1	1	0	1	1	1	1	1	234
Minnesota			Sec. 358.07 MN Statutes	"You do swear that you will support the Constitution of the United States and that of the state of Minnesota, and will conduct yourself as an attorney and counselor at law in an upright and courteous manner, to the best of your learning and ability, with all good fidelity as well to the court as to the client, and that you will use no falsehood or deceit, nor delay any person's cause for lucre or malice. So help you God."	1	80	0	0	1	1	0	0	1	0	0	0	0	0	0	1	0	80
Mississipi			Mississippi Code § 73-3-35 (2024) - Oath in each court :: 2024 Mississippi Code :: U.S. Codes and Statutes :: U.S. Law :: Justia	"I do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, according to the best of my learning and ability, and with all good fidelity as well to the court as to the client; that I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Mississippi and the Constitution of the United States. So help me God."	1	80	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	80
Missouri	1-Feb-72	1-Oct-03	8.15	Oath or Affirmation	I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Missouri; That I will maintain the respect due courts of justice, judicial officers and members of my profession and will at all times conduct myself with dignity becoming of an officer of the court in which I appear; That I will never seek to mislead the judge or jury by any artifice or false statement of fact or law; That I will at all times conduct myself in accordance with the Rules of Professional Conduct; and, That I will practice law to the best of my knowledge and ability and with consideration for the defenseless and oppressed. So help me God.	1	117	1	0	1	1	0	1	1	0	0	0	0	0	1	0	0	117
Montana			https://juddocumentservice.mt.gov/getDocByCTrackId?DocId=192242	I do affirm: I will support the Constitution of the United States and the Constitution of the State of Montana; I will maintain the respect due to the courts of justice and judicial officers; I will not counsel or maintain any proceedings which shall appear to me to be taken in bad faith or any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with rny client's business except from my client or with my clients knowledge or approval; I will be candid, fair, and courteous before the court and with other attorneys, maintain civility toward opposing parties and their counsel not only in court, but also in all written and oral communications, and advance no fact prejudicial to the honor or reputation of the party or witness, unless required by the justice of the cause with which I am charged; I shall faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of my knowledge and ability; I will strive to uphold the honor and to maintain the dignity of the profession to improve not only the law but the administration of justice, so help rne God.	1	244	0	1	1	1	0	1	1	0	0	0	0	0	0	0	1	244
Nebraska			§ 3-128. Swearing in of applicants. | Nebraska Judicial Branch	You do solemnly swear that you will support the Constitution of the United States, and the Constitution of this state, and that you will faithfully discharge the duties of an attorney and counselor, according to the best of your ability."	0	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48

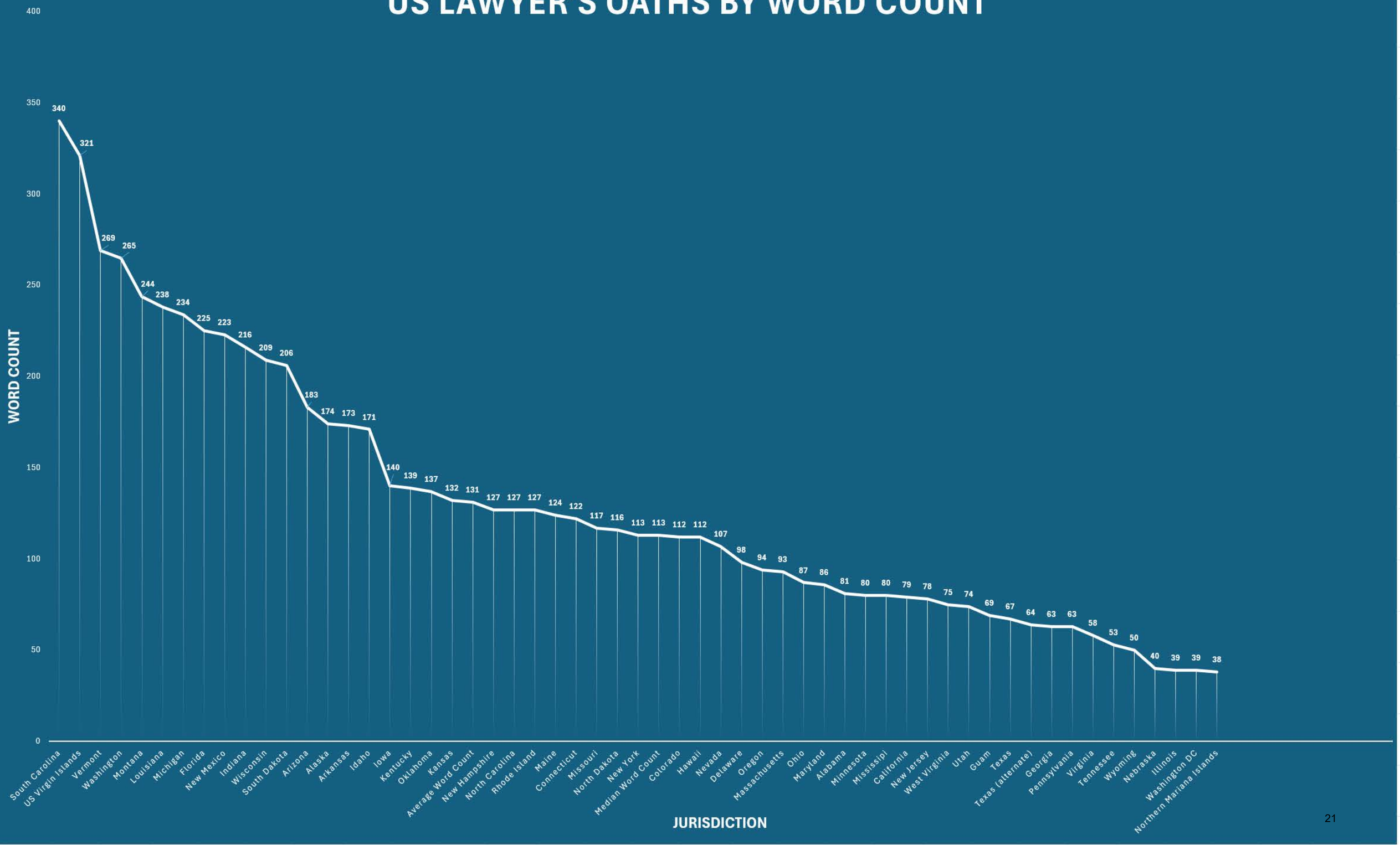
Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Nevada			https://nvbar.org/wp-content/uploads/Oath%20of%20Attorney_0.pdf	I DO SOLEMNLY SWEAR, OR AFFIRM, THAT: I will support the Constitution and government of the United States and of the State of Nevada; I will maintain the respect due to courts of justice and judicial officers; I will support, abide by and follow the Rules of Professional Conduct as are now or may hereafter be adopted by the Supreme Court; I will conduct myself in a civil and professional manner, whether dealing with clients, opposing parties and counsel, judicial officers or the general public, and will promote the administration of justice; and I will and honestly discharge the duties of an **attorney** at law to the best of my knowledge and ability.	0	107	1	0	0	1	0	1	1	0	0	0	0	0	0	0	0	107
New Hampshire			Chapter 311 ATTORNEYS AND COUNSELORS	You solemnly swear or affirm that you will do no falsehood, nor consent that any be done in the court, and if you know of any, that you will give knowledge thereof to the justices of the court, or some of them, that it may be reformed; that you will not wittingly or willingly promote, sue or procure to be sued any false or unlawful suit, nor consent to the same; that you will delay no person for lucre or malice, and will act in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as to your client.*So help you God or under the pains and penalty of perjury.*	1	127	0	0	1	0	0	1	1	0	0	0	0	0	0	1	0	127
New Jersey			Roll of Attorneys of the State of NJ	I, , do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey; that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people; and that I will perform the duties of an attorney at law faithfully, impartially, and justly, to the best of my ability	0	78	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	78
New Mexico			Rule Set 15 - Rules Governing Admission to the Bar - NMOneSource.com	I, _____, do solemnly swear or affirm: I will support the Constitution of the United States and the Constitution of the State of New Mexico; I will maintain the respect due to courts of justice and judicial officers; I will comply with the Rules of Professional Conduct adopted by the New Mexico Supreme Court; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; I will maintain civility at all times, abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged; I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.	0	223	1	1	1	1	0	1	1	1	1	0	1	1	1	1	1	223
New York			New York Judiciary Law § 466 (2024) - Attorney's Oath of Office. :: 2024 New York Laws :: U.S. Codes and Statutes :: U.S. Law :: Justia	Judiciary Law § 466 Each person, admitted as prescribed in this chapter must, upon his [or her] admission, take the constitutional oath of office in open court, and subscribe the same in a roll or book, to be kept in the office of the clerk of the appellate division of the supreme court for that purpose. § 1 of Article XIII of the New York State Constitution I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of [attorney and counselor-at-law], according to the best of my ability.	0	113	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	113
North Carolina			Oath of Office NCSB	I, _____, do solemnly swear that I will support the Constitution of the United States; so help me God. I, _____, do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina and to the Constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said state, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God. I, _____, do swear that I will truly and honestly demean myself in the practice of an Attorney, according to the best of my knowledge and ability, so help me God.	1	127	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	127
North Dakota			North Dakota Century Code t27c11	" the oath prescribed in section 4 of article XI of the Constitution of North Dakota, and such additional oath or pledge as the supreme court may require." which is: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of _____ according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury) if an affirmation, and any other oath, declaration, or test may not be required as a qualification for any office or public trust.	1	116	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	116
Ohio			Admission to the Bar Ceremony, May 12, 2025 https://www.supremecourt.ohio.gov/attorneys/admission-to-the-practice-of-law-in-ohio/admission-to-the-bar/	I, , hereby (swear or affirm) that I will support the Constitution and the laws of the United States and the Constitution and the laws of Ohio, and I will abide by the Ohio Rules of Professional Conduct. In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons. I will honestly, faithfully, and competently discharge the duties of an attorney at law. (So help me God.)	1	87	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	87

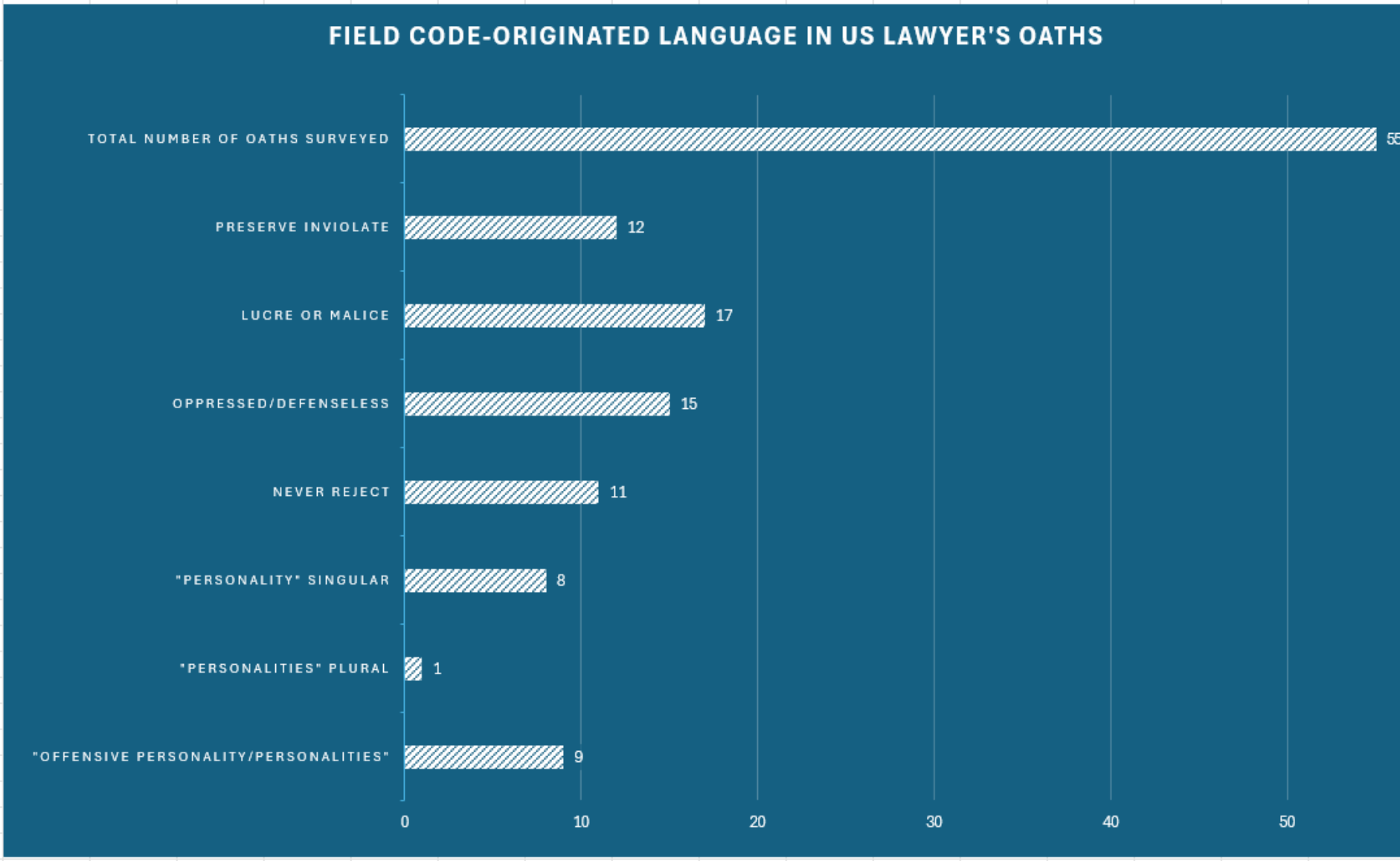
Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Oklahoma			Oklahoma Statutes §5-2 (2024) - Oath. :: 2024 Oklahoma Statutes :: U.S. Codes and Statutes :: U.S. Law :: Justia	You do solemnly swear that you will support, protect and defend the Constitution of the United States, and the Constitution of the State of Oklahoma; that you will do no falsehood or consent that any be done in court, and if you know of any you will give knowledge thereof to the judges of the court, or some one of them, that it may be reformed; you will not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you will delay no man for lucre or malice, but will act in the office of attorney in this court according to your best learning and discretion, with all good fidelity as well to the court as to your client, so help you God.	1	137	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	137
Oregon			Oath of Office for Admission to the Practice of Law in Oregon	I, _____, swear (or affirm): That I will faithfully and honestly conduct myself in the office of an attorney in the courts of the State of Oregon; that I will observe and abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Oregon; and that I will support the Constitution and laws of the United States and of the State of Oregon. To the court, opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications	0	94	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	94
Pennsylvania			42 Pennsylvania Consolidated Statutes § 2522 (2024) - Oath of office :: 2024 Pennsylvania Consolidated Statutes :: U.S. Codes and Statutes :: U.S. Law :: Justia	"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity, as well to the court as to the client, that I will use no falsehood, nor delay the cause of any person for lucre or malice."	0	63	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	63
South Carolina			Rule 402 - South Carolina Judicial Branch	I do solemnly swear (or affirm) that: I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect, and defend the Constitution of this State and of the United States; I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them; To my clients, I pledge faithfulness, competence, diligence, good judgment, and prompt communication; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime; I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law; I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval; I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice; [So help me God.] The oath or affirmation shall be administered during the ceremony, and all persons admitted shall sign their names in a book, kept for that purpose, in the office of the Clerk of the Supreme Court.	1	340	0	1	1	1	1	1	1	1	0	0	0	0	1	0	1	340
South Dakota			SDLRC - Codified Law 16-16-18 - Oath of attorney--Form and administration.	I do solemnly swear, or affirm, that: I will support the Constitution of the United States and the Constitution of the State of South Dakota; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from that client or with the client's knowledge or approval; I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.	0	206	0	1	1	1	0	1	1	1	1	0	1	1	1	1	1	206
Tennessee			Rule 6: Admission of Attorneys. | Tennessee Administrative Office of the Courts	I, _____, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Tennessee. In the practice of my profession, I will conduct myself with honesty, fairness, integrity, and civility to the best of my skill and abilities, so help me God.	1	53	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	53
Texas			State Bar of Texas | New Lawyer Oath & Fees	I, , do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God	1	67	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	67
Utah			Attorney Oath General Instructions	I DO SOLEMNLY SWEAR that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah.	0	74	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	74

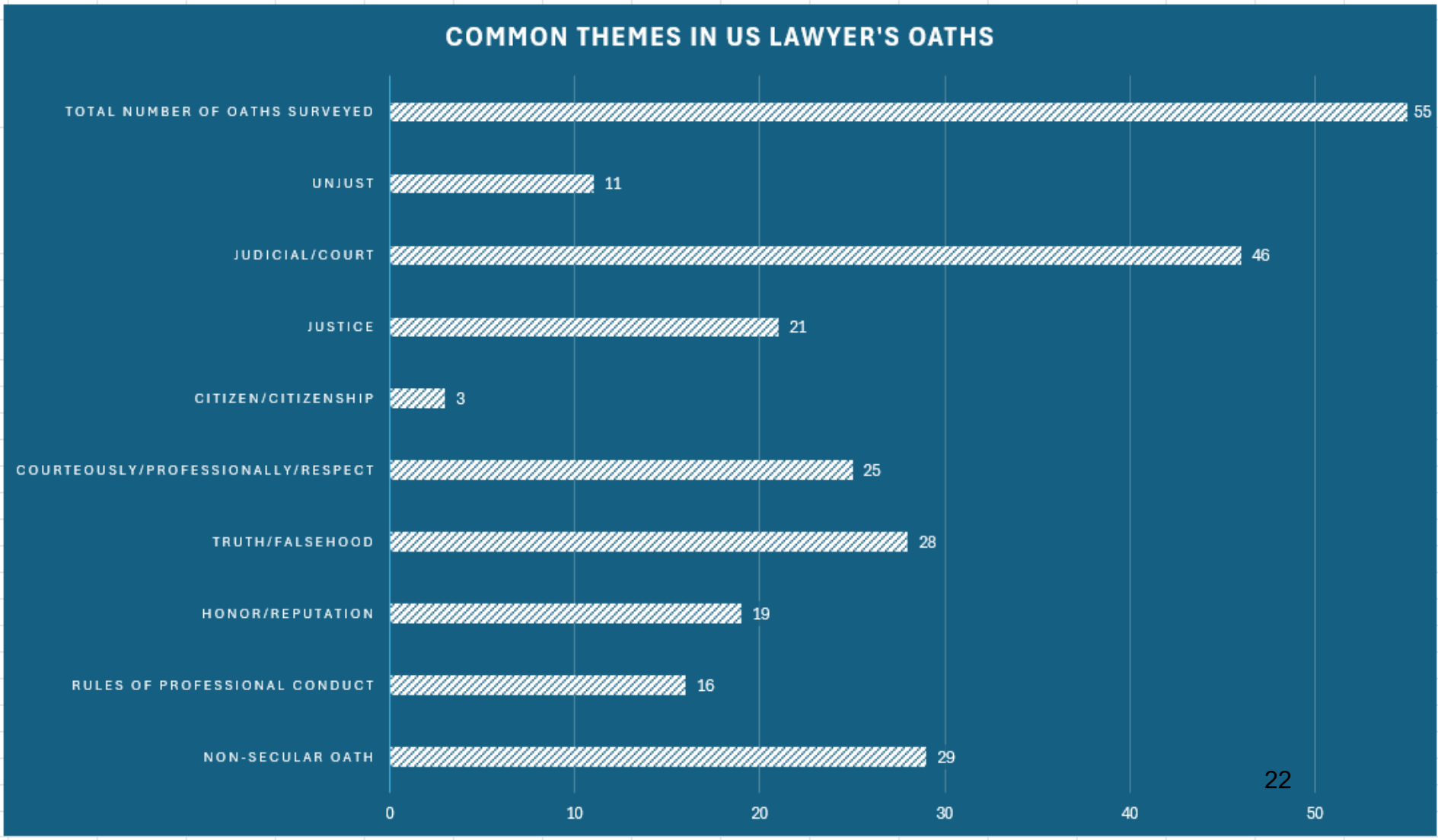
Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/Falsehood	Courteous/Courteously/Professionally/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Vermont			Microsoft Word - 900-00014 - Rules of Admission 2025.01.01	(A) In accordance with 12 V.S.A. §§ 5812 and 5851: I do solemnly swear (or affirm) that I will do no falsehood, nor consent that any be done in court, and if I know of any, I will give knowledge thereof to the judges of the court or some of them, that it may be reformed; that I will not wittingly, willingly, or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; that I will delay no person for lucre or malice, but will act in the office of attorney within the court, according to my best learning and discretion, with all good fidelity as well to the court as to my client. (If an oath:) So help me God. (If an affirmation:) Under the pains and penalties of perjury. (B) In accordance with Chapter II, Section 56 of the Vermont Constitution: I do solemnly swear (or affirm) that I will be true and faithful to the State of Vermont, and that I will not, directly or indirectly, do any act or thing injurious to the Constitution or the Government thereof (If an oath:) So help me God. (If an affirmation:) Under the pains and penalties of perjury. (C) Additionally: I do solemnly swear (or affirm) that I will be true and faithful to the United States of America, and that I will not, directly or indirectly, do any act or thing injurious to the Constitution or the Government thereof (If an oath:) So help me God. (If an affirmation:) Under the pains and penalties of perjury.	1	269	0	0	1	0	0	0	1	0	0	0	0	0	0	1	0	269
Virginia			oath requirement: https://law.lis.virginia.gov/vacodefull/title54.1/chapter39/ oath text: https://vsb.org/common/Uploaded%20files/docs/Instructions-and-Oath-Card.pdf	I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that I will faithfully, honestly, professionally, and courteously demean myself in the practice of law and execute my office of attorney at law to the best of my ability, so help me God.	1	58	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	58
Washington	12-Feb-68	24-Jun-25	https://www.courts.wa.gov/courtrules/admissionandPracticeRules.cfm?Rule=Preadmission%20Requirements:%20Oath:%20Recommendation%20for%20Admission:%20Order%20Admitting%20to%20Practice%20Law&fileName=GA_APR_05_00_00.pdf&link=https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_05_00_00.pdf	1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same. 2. I will support the constitution of the State of Washington and the constitution of the United States. 3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington. 4. I will maintain the respect due to the courts of justice and judicial officers. 5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement. 6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court. 7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged. 8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.	0	265	1	1	1	1	0	1	1	1	1	1	0	1	1	0	1	265
West Virginia	25-Jul-01	20-Nov-12	https://www.courtswv.gov/legal-community/rules-for-admission	"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of West Virginia; that I will honestly demean myself in the practice of law; that I will conduct myself with integrity, dignity and civility and show respect toward judges, court staff, clients, fellow professionals and all other persons; and, to the best of my ability, execute my office of attorney-at-law; so help me God."	1	75	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	75
Wisconsin	29-Dec-80	26-Apr-22	https://www.wicourts.gov/sc/rules/chap40.pdf	I will support the constitution of the United States and the constitution of the state of Wisconsin; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land; I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.	1	209	0	1	1	1	0	1	1	1	1	0	1	1	1	1	1	209
Wyoming	27-Aug-14	2-Jun-15	https://www.wyocourts.gov/app/uploads/2025/01/Rules-and-Procedures-Governing-Admission-to-the-Practice-of-Law-August-2024-1.pdf	"I, _____, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution and laws of the State of Wyoming, and that I will faithfully and honestly and to the best of my ability discharge the duties of an Attorney and Counselor at Law."	0	50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	50
Rhode Island			Article II Admission of Attorneys and Others to Practice Law.pdf	"You solemnly swear that in the exercise of the office of attorney and counselor you will do no falsehood, nor consent to any being done; you will not wittingly or willingly promote, sue or cause to be sued any false or unlawful suit; or give aid, or consent to the same; you will delay no man's cause for lucre or malice; you will in all respects demean yourself as an attorney and counselor of this court and of all other courts before which you may practice uprightly and according to law, with fidelity as well to the court as to your client; and that you will support the constitution and laws of this state and the constitution and laws of the United States. So help you God."	1	127	0	0	1	1	0	0	1	0	0	0	0	0	0	1	0	127
Washington DC			Attorney_Oath_Statement_Roll_of_Attorneys.pdf	I, _____ do solemnly swear (or affirm) that as a member of the Bar of this Court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America.	0	39	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	39

Jurisdiction	Date Adopted	Last Updated	Source Link	Oath Text	God?	Word Count	Rules of Professional Conduct Mentioned?	Honor/Reputation	Truth/falsehood	Courteous/Courteously/Professionall y/Respect	Citizen/Citizenship	Justice	Judicial/Court	Unjust	Offensive or Personality	Personalities plural	Personality singular	Never Reject	Oppressed/Defenseless	Lucre or Malice	Preserve Inviolate	Word Count
Guam			Guam Rules Governing Admission to the Practice of Law	"I solemnly swear that I will support The Constitution of the United States, The Organic Act of Guam, the applicable statutes of the United States and the laws of Guam; that I will maintain the respect due to the courts of justice and judicial officers and that I will conduct myself honorably as an attorney at law; and that I will abide by the Guam Rules of Professional Conduct."	0	69	1	1	0	1	0	1	1	0	0	0	0	0	0	0	0	69
Texas (alternate)			see Texas entry	I, , do affirm that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties.	0	64	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	64
US Virgin Islands			VISCR_204_-_Regular_Admission.pdf	"I do solemnly swear (or affirm): I will support the Constitution and laws of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands; I will maintain the respect due to courts of justice and judicial officers, and conduct myself in accordance with the Virgin Islands Rules of Professional Conduct; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice; I will strive to uphold the honor and maintain the dignity of the profession and to improve not only the law, but the administration of justice; and I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in the Virgin Islands. So help me God. (I hereby affirm)"	1	321	1	1	1	1	0	1	1	1	1	0	1	1	1	1	1	321
Northern Mariana Islands			Attorney Oath on Admission – Northern Mariana Islands District Court Government Form in Northern Mariana Islands – Formalu	I, , DO SOLEMNLY SWEAR (OR AFFIRM) THAT AS AN ATTORNEY AND AS A COUNSELOR OF THIS COURT I WILL CONDUCT MYSELF UPRIGHTLY AND ACCORDING TO LAW, AND THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES	0	38	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	38
Sums/Average Word Count					29	131	16	19	28	25	3	21	46	11	9	1	8	11	15	17	12	131
Median Word Count						113																113
Puerto Rico					0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
American Samoa					0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

US LAWYER'S OATHS BY WORD COUNT




FIELD CODE-ORIGINATED LANGUAGE IN US LAWYER'S OATHS
TOTAL NUMBER OF OATHS SURVEYED
55
PRESERVE INVIOLATE
12
LUCRE OR MALICE
17
OPPRESSED/DEFENSELESS
15
NEVER REJECT
11
"PERSONALITY" SINGULAR
8
"PERSONALITIES" PLURAL
1
"OFFENSIVE PERSONALITY/PERSONALITIES"
9
0
10
20
30
40
50


COMMON THEMES IN US LAWYER'S OATHS
TOTAL NUMBER OF OATHS SURVEYED
55
UNJUST
11
JUDICIAL/COURT
46
JUSTICE
21
CITIZEN/CITIZENSHIP
3
COURTEOUSLY/PROFESSIONALLY/RESPECT
25
TRUTH/FALSEHOOD
28
HONOR/REPUTATION
19
RULES OF PROFESSIONAL CONDUCT
16
NON-SECULAR OATH
29
0
10
20
30
40
50

WSBA
OFFICE OF THE GENERAL COUNSEL

Robert D. Welden
General Counsel

direct line: 206-727-8232
fax: 206-727-8320
e-mail: bobw@wsba.org

October 12, 2001

The Honorable Gerry L. Alexander
Chief Justice
Washington State Supreme Court
P. O. Box 40929
Olympia, Washington 98504-0929

Re: Suggested Amendment to APR 5: Oath of Attorney

Dear Chief Justice Alexander:

Pursuant to GR 9, the Board of Governors of the Washington State Bar Association submits to the Supreme Court suggested amendments to APR 5 regarding the Oath of Attorney. Thank you for your consideration.

Very truly yours,

Robert D. Welden
General Counsel

cc: Dale L. Carlisle
Lindsay T. Thompson
M. Janice Michels
Nanette Sullins

GR 9 COVER SHEET

Suggested Amendment
ADMISSION TO PRACTICE RULES (APR)

RULE 5. RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE; PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT

---

(1) Name of Proponent: The Washington State Bar Association.

(2) Spokespersons:

- Dale L. Carlisle, President, Washington State Bar Association, 1201 Pacific Ave., Ste. 2200, Tacoma WA 98401-1157 (telephone 253-620-6401).
- Lindsay T. Thompson, Attorney at Law, 200 W. Mercer St., Ste. 207, Seattle WA 98119 (telephone 206-285-7528).
- Robert D. Welden, General Counsel, Washington State Bar Association, 2101 Fourth Avenue, 4th Fl., Seattle, WA 98121-2330 (telephone 206-727-8232).

(3) Purpose: The Board of Governors proposes revising the Oath of Attorney to make it more meaningful and contemporary. The Board also proposes amending the provision in the rule regarding the definition of a judge before whom the oath may be taken.

Taking an oath is - and should be - a serious business. Oaths link those who take them to the earliest of times and man's earliest, struggling attempts to bring order to life and his relations with others. In our profession, the Oath of Attorney not only confers upon those who take it the privilege to practice law but also marks them as the latest in an unbroken line of lawyers and judges.

The first formal Oath of Attorney in Washington was enacted by the Legislature in 1909 (Laws of 1909 ch. 139, § 6). It was essentially identical to that of a number of other states, and appears to have been based on an ABA model. There have been additions

(e.g., reference to the Rules of Professional Conduct) and deletions (e.g., "lucre or malice") to the language of the Oath, but it remains substantially the same today as adopted nearly 100 years ago.

Times change, however, and the oath, now set forth in APR 5, has not. Society and language have left it behind. For many years it has been the subject of steady critique and criticism for being increasingly out of date in rhythm and use of language. In 1986, for example, Justice Vernon Pearson forwarded to the Washington State Bar Association the letter of a newly admitted lawyer who wrote, "when I was sworn in I recited but did not understand the phrase 'abstain from all offensive personalities.' No one around me knew what it meant either. More than a few laughed when we came to it. I think it should be revised so that admittees would not begin their legal careers swearing to something they do not understand. . . a literal reading produces an impossible promise: to avoid obnoxious people. The oath should be aspirational, but not unrealistic. The moment of being sworn in should be unspoiled by either levity or misconception."

Several years later, WSBA President Bill Gates described the oath as "strong," with "unexpected fine points that commended my interest" on rereading it. Overall, however, he observed, "it may not be the most artful piece of prose in American literature."

A WSBA Board of Governors committee considered revisions to the oath in 1996-97. One member called the oath "fairly hackneyed and not at all inspiring," and commented that the admonition to abstain from offensive personalities "has been found unconstitutionally vague in California." In 1999, Tacoma-Pierce County Bar Association president Salvador Mungia proposed a comprehensive revision of the oath. A King County

court commissioner in 2000 said the Oath "is awkward at best to have repeated by the attorney and obscure in some of its language."

Numerous Superior Court judges and bar leaders have commented, after years of attending and conducting admission ceremonies, that the oath uses words that have lost their currency. A ceremony that should be solemn and inspiring is invariably punctuated by snickers and chuckles.

The current oath has become both pompous and dull, both because of its original drafting and the passage of time. It needs updating to restore the solemnity of admission to the bar and to restate our most basic and cherished professional values for new times and the future. The revisions have gone through many drafts, and contributions of scores of lawyers were considered and included in the final version. The proposed revisions were published for comment in the *Washington State Bar News* and no opposition to updating the oath has been received.

The basic format of the current oath is preserved in the proposed revision. The language has been updated and made gender-neutral. Archaisms are removed. The sense of pride and challenge, of summons to a high professional calling, is sharpened and focused by adopting the "responsive reading" style common in many religious and ceremonial traditions, in which the reading alternates between the leader of the service and the congregation.

This is a vital change. In breaking out the various elements of the oath into specific, individual commitments to be taken, one by one, each commitment and its importance is underscored. The change restores a sense of rhythm and pacing the present oath lacks.

In its current form the oath is hard for a group to read in unison, and all too often in admission ceremonies its recitation breaks down into a dissonant mumble.

Because the oath is an oral document, it is important to read the proposed revision aloud, and during the Board's consideration, the revised oath was verbalized before adoption. The Board of Governors believes the combination of updated language, and the punctuation of the oath with affirmations of each of its commitments in turn, will restore the oath to the significance it should have.

Some have argued that the present oath should be retained precisely because it *is* old, because thousands of our predecessors at the bar spoke the same words before us at their admission.

There is no denying the value and the strength of the bonds of tradition. And yet, courts daily revised and update old doctrines, discard outmoded rules of law, or redraft them to meet new necessities. We no longer plead in Law French. The rule against perpetuities has been repealed in Washington. Women and minorities are admitted to practice before our courts. This court has a process for the constant review and revision of its rules in order to improve and update them.

For these reasons, the adoption of the proposed revision of the Oath of Attorney is urged upon this court.

In addition, the Board of Governors proposes that any judge elected or appointed to an elected position in the state of Washington, or a judge of the United States, be authorized to administer the oath of attorney. Currently, only judges of general or appellate jurisdiction are authorized to administer the oath. The amendment would authorize judges

in elected positions in municipal and district courts to also administer the oath.

(4) Hearing. A hearing is not requested.

(5) Expedited Consideration: Circumstances do not require expedited consideration of these proposed rule amendments.

(6) Supporting Material:

a. Suggested amendment to Admission to Practice Rule 5.
b. Essay in support of suggested new oath by Governor Lindsay T. Thompson.

SUGGESTED AMENDMENT

ADMISSION TO PRACTICE RULES (APR)

RULE 5. RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE; PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT

(a) [No change].

(b) [No change].

(c) Oath of Attorney. The Oath of Attorney must be taken before a ~~court of general or appellate jurisdiction~~ judge elected or appointed to an elected position, or a judge of the United States, sitting in open court, in the state of Washington. In the event a successful applicant is outside the state of Washington and the Chief Justice is satisfied that it is impossible or impractical for the applicant to take the oath before a court ~~of general or appellate jurisdiction~~ in this state, the Chief Justice may, upon proper application setting forth all the circumstances, designate a person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

(d) Contents of Oath. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.

~~I, _____, do solemnly declare:~~

~~1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.~~

~~2. I will support the constitution of the State of Washington and the constitution of the United States.~~

~~3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.~~

~~4. I will maintain the respect due to the courts of justice and judicial officers.~~

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

~~5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.~~

~~6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.~~

~~7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged. 8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.~~

(The judicial officer administering the oath reads as follows):

Do you accept the invitation of the Supreme Court of Washington to practice before the courts of this State, and solemnly promise:

1. that you will uphold the laws and Constitutions of the United States and of the State of Washington and support the principles of constitutional government;
2. that you will support the independence of the judiciary and help sustain its independence by assuring that adequate provision is made for its support;
3. that you will sustain the rule of law and help realize the promise of liberty for all by assuring equal access to justice for all;
4. that you will undertake representation of the oppressed, the defenseless, the disempowered, and the just cause, without regard for considerations personal to yourself, to the end that you make justice manifest and society just;

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

5. that as an Officer of the Court you will maintain the respect due the Court, its officers, staff and all persons appearing before it;
6. that as a member of this honorable profession, you will abide by the Rules of Professional Conduct, both in letter and spirit, always tell the truth and never intentionally mislead by act or omission;
7. that you will faithfully represent your clients, maintain their confidences and preserve as inviolate their communications, pursuing their just causes by only such means as are consistent with truth and honor;
8. that you will strive at all times to adhere to the highest standards of professional and personal conduct, to advance and improve the justice system, to act in all ways in service to your clients and your community, and by so doing, be proud to be a lawyer and become a source of pride to the profession?

(The individual(s) taking the oath will respond: Yes. I will. *[Should be repeated after each statement above.])*

Do you now, without equivocation, affirm your sincere and solemn commitment to the fulfillment of all of these promises, knowing that by so doing you bring honor to yourself, the greater community, and your profession?

(The individual(s) taking the oath will respond: Yes. I do).

_____

(applicant's signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, ~~19~~ 20__.

_____

Judge

(e) [No change].

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

WASHINGTON OATH OF ATTORNEY

Lindsay T. Thompson
Governor, Washington State Bar Association 1998 – 2001

Taking an oath is-and should be-a serious business. Oaths link those who take them to the earliest of times and man's earliest, struggling attempts to bring order to life and his relations with others. In our profession, the Oath of Attorney not only confers upon those who take it the privilege to practice law but marks them as the latest in a line of lawyers and judges stretching back to the dawn of recorded history.

The Oxford Dictionary of the World's Religions describes an oath as

"A self-curse in Judaism which would be fulfilled if certain conditions were not met. Oath-taking was common in Ancient Israel over both serious and trivial matters (e.g. Judith 21.1; from 1 Sam. 14.28; Genesis 21.23; Joshua 29.18). A fault oath would be punished by God, who 'will not hold guiltless one who swears falsely by his name.' In Talmudic law, oaths were used as a means of judicial proof in civil cases and could not be sworn by known liars, minors, the deaf and dumb, or the insane... From the 14th century it became customary to 'swear in' witnesses, although some authorities maintained that if a witness cannot be believed without first swearing an oath, he cannot be believed that all."

John Bowles, editor, ***The Oxford Dictionary of the World's Religions*** (Oxford University Press, 1997 at 710). "These things I will that thou affirm constantly," the Bible admonishes.

Ancient Greek judges took an oath to administer the laws fairly. The playwright Aeschylus wrote of the oath's significance that "it is not the oath that makes us believe the man, but the man the oath."

The court oath witnesses take today "has had a legal significance since the days before the Norman Conquest," David Mellinkoff, wrote in ***The Language of the Law*** (Little Brown & Company, 1963). "The solemn words of oath taking created an immediate relationship, and put in pawn part of a man's personality." Mellinkoff, at 41. Oaths are a relic of preliterate times, when words counted, and bound one to act, or forbear from acting. Cases were oral, each side offering "oath against oath, with the confidence and fear that a false oath would damn." Mellinkoff, at 42. Oaths are a product of oral tradition, with rhythmic cadences that aid memorization and recitation; a byproduct is their ability to inspire precisely because they draw from a common heritage almost lost to memory, but present in us all. "Even in modern dress," Mellinkoff observes, "the old oaths have an impressive poetical roll, words at work for their own sound effects...It is but a short step from the most ancient Anglo-Saxon oaths to the redundant but poetic *truth, the whole truth, and nothing but the truth,* Old English

words joined in an oath still current" a thousand years later.

The current Washington Oath of Attorney was adopted by the Legislature in 1916. It is identical to that of a number of other states, and appears to have been an early example of ABA "one size fits all" drafting and the sometime legal mania for uniformity.

Times change, however, and the oath, now set forth in APR _____, has not. Society and language has left it behind. For at least fifteen years it has been the subject of steady critique and criticism for being increasingly out of date. In 1986, for example, Justice Vernon Pearson forwarded to the Washington state Bar Association the letter of a newly admitted lawyer who wrote, "when I was sworn in I recited but did not understand the phrase 'abstain from all offensive personalities.' No one around me knew what it meant either. More than a few laughed when we came to it. I think it should be revised so that admittees would not begin their legal careers swearing to something they do not understand... a literal reading produces an impossible promise: to avoid obnoxious people. The oath should be aspirational, but not unrealistic. The moment of being sworn in should be unspoiled by either levity or misconception." Justice Pearson asked that the oath to be revised when the APRs came up for review but no action was taken.

Several years later, WSBA President Bill Gates described the oath as "strong," with "unexpected fine points that commended my interest" on rereading it. Overall, however, he observed, "it may not be the most artful piece of prose in American literature."

A WSBA Board of Governors committee considered revisions to the oath in 1996-97. One called the oath "fairly hackneyed and not all inspiring," and commented that the admonition to abstain from offensive personalities "has been found unconstitutionally vague in California."

Then-Tacoma-Pierce County Bar Association president Salvador Mungia proposed a comprehensive revision of the oath in 1999.

A King County court commissioner volunteered to help rewrite the oath in 2000, having found "it is awkward at best to have repeated by the attorney and obscure in some of its language."

Numerous Superior Court judges and bar leaders have commented, after years of attending and conducting admission ceremonies, that the oath is too long and uses words that have lost their currency. A ceremony that should be solemn and inspiring is invariably punctuated by snickers and chuckles at the admonition to abstain from offensive personalities, or not to delay "any man's clause for lucre or malice."

Analyzing the "mannerisms" of the Law, David Mellinkoff notes that two characteristics of much legal language are pomposity and dullness. Justice Cardozo called this high style "magisterial" (***Law and Literature***, 1931, at 10), but there was only one Cardozo. Of the pompous legal language of mere mortals, Mellinkoff comments, "incongruity is its essence, self-esteem its badge." ***The Language of the Law,*** at 27.

To no small extent a consequence of the drive for solemn grandeur also ends in dullness. "Sufficient interest of reader or listener may infuse life into the most lackluster speech," Mellinkoff notes. "Yet even granting intense professional interest, too much of the law and discussion about the law is expressed in language bereft of vital juices."***The Language of the Law,*** at 28.

The current oath has become both pompous and dull, both because of its original drafting and the passage of time. It needs updating to restore the solemnity of admission to the bar and to restate our most basic and cherished professional values for new times and the future.The revisions have gone through many drafts and contributions of scores of lawyers were considered and included in the final version. The proposed revisions were published for comment in the ***Washington State Bar News*** and no opposition to updating the oath has been received.

The basic format of the current oath is preserved in the proposed revision. The language has been updated and made gender-neutral. Archaisms are removed. The sense of pride and challenge, of summons to a high professional calling, is sharpened and focused by adopting the "responsive reading" style common in many religious traditions, in which the reading alternates between the leader of the service and the congregation.

This is a vital change. In breaking out the various elements of the oath into specific, individual commitments to be taken, one by one, each commitment and its importance is underscored. The change restores a sense of rhythm and pacing the present oath lacks. In its current form the oath is hard for a group to read in unison, and all too often in admission ceremonies its recitation breaks down into a dissonant mumble, raised hands adroop around the room.

Because the oath is an oral document, it is important to to read the proposed revision aloud. The Board of Governors believes the combination of updated language and the punctuation of the oath with affirmations of each of its commitments in turn, will restore the oath to the significance it should have.

Some have argued that the present oath should be retained precisely because it *is* old, because thousands of our predecessors at the bar spoke the same words before us that their admission.

There is no denying the value and the strength of the bonds of tradition.

"Names are changed more readily than doctrines, and doctrines more readily than ceremonies," the English novelist Thomas Love Peacock (1785-1866) wrote. And yet, courts daily revised and update old doctrines, discard outmoded rules of law, or redraft them to meet new necessities. We no longer plead in Law French; the rule against perpetuities has been repealed in Washington. Women and minorities are admitted to practice before our courts. This court has a process for the constant review and revision of its rules in order to improve and update them. Without considered and thoughtful adaptation over time we are as Chief Justice Fortescue held at 36 Hen. VI, ff.25b-26 (1458): "Sir, the law is as I say it is, and so it has been laid down ever since the law began; and we have several set forms which are held as law, and so held and used for good reason, though we cannot at present remember that reason." Rather, we should recognize the truth of Justice Cardozo's comment that "existing rules and principles can give us are present location, our bearings, our latitude and longitude. The inn that shelters us for the night is not the journey's end. The law, like the traveler, must be ready for the morrow. It must have a principal of growth" (***The Growth of the Law,*** 1924, at 19-20). For these reasons, the adoption of the proposed revision of the Oath of Attorney is urged upon this court.

The Supreme Court
State of Washington

CHARLES W. JOHNSON
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929

(360) 357-2020
FACSIMILE: (360) 357-2102
E-MAIL: J_C.JOHNSON@COURTS.WA.GOV

March 11, 2002

M. Janice Michels, Executive Director
Washington State Bar Association
2101 Fourth Avenue - Fourth Floor
Seattle, Washington 98121-8200

RE: PROPOSED REVISIONS TO OATH OF ATTORNEY

Dear Jan:

As you will recall, the Court and the Board of Governors discussed the Bar's proposed amendments to the attorney oath found at APR 5 at its joint meeting earlier this year. Following that meeting, the Rules Committee discussed whether it was interested in pursing the modification the existing oath. The Rules Committee determined unanimously that it favored the retention of the present oath.

If you or any of the governors have any questions, please do not hesitate to contact me.

Very truly yours,

Charles W. Johnson

Charles W. Johnson, Chair
Supreme Court Rules Committee

GR 9 COVER SHEET

Suggested Amendments
ADMISSION AND PRACTICE RULES (APR)
Rule 5

Submitted by the Washington State Bar Association

A. Name of Proponent:

Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Robin L. Haynes, President
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

B. Spokesperson:

Paula C. Littlewood, Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Jean K. McElroy, General Counsel/Chief Regulatory Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539 (Phone: 206-727-8277)

C. Purpose:

The suggested amendments to APR 5 principally represent a reorganization of the information contained in the Admission and Practice Rules, rather than substantive changes to admission policies and practices. While its contents have been significantly restructured, the aim of the proposed amendments is to eliminate duplication of rules and unify administrative processes within the Washington State Bar Association for lawyers, LLLTs and LPOs.

The following describes the proposed amendments and the purpose and

intended effect.

APR 5(a)

The current APR 5(a), “Recommendation for Admission”, has been moved to the suggested amendments to APR 5(h), with some changes.

The suggested amendments to APR 5(a) Preadmission Requirements broadens the language so it can apply to lawyer, Limited License Legal Technician (LLLT), and Limited Practice Officer (LPO) licenses to practice law. In the suggested amended text, the commonalities among the preadmission requirements for the three types of licenses are clearly delineated in APR 5(a) 1-4. This information is currently found in APR 5(b), APR 12(c) and APR 28(D).

There are several basic admission requirements that were built into the foundation of all three license types: paying a license fee, filing licensing forms, and taking an oath. The only preadmission requirement listed in section (a) that represents a substantive change is APR 5(a)(4), which requires all applicants who meet certain criteria to designate a resident agent per APR 13 in order to be licensed. This would create a small but substantive change to the address requirements for LLLTs and LPOs. Those changes are discussed in the GR 9 coversheets for suggested amendments to APR 12, 13, and 28.

APR 5(b)

This section addresses additional requirements for applicants seeking admission and licensing as a lawyer, beyond the requirements for preadmission common to all license types. The requirements for lawyer admission have not changed, but in APR 5(b)(1) additional information regarding the Washington Law Component, including the minimum pass score, would be added. This information currently exists in the

Admissions Policies of the Bar, adopted by the Board of Governors at the time of switching to the Uniform Bar Exam.

In APR 5(b)(2), there is an amendment intended to clarify that the Bar, rather than the Board of Governors, approves the four hours of education required for admission. This is an administrative task better suited to the expertise of Bar staff than to the Board of Governors, and has traditionally been performed by the Bar.

The subsequent deletions in APR 5(b) reflect a reorganization of information; the preadmission requirements formerly found in this section can now be found in APR 5(a).

APR 5(c)

The suggested amendments would list the preadmission requirements for LLLT applicants. There would be no substantive changes to these requirements. These requirements are located in the current APR 28(E).

APR 5(d)

The suggested amendments would list the preadmission requirements specific to LPOs. There would be no substantive changes to these requirements. This requirement is located in the current APR 12(c).

APR 5(e)

The suggested amendments to APR 5(e) would describe the expiration of preadmission requirements for all license types. This section would take information currently located in APR 5(b), which applied only to applicants for admission and licensing as a lawyer, and would add text defining the expiration of preadmission requirements for all license types. There have been no substantive changes to the requirements for lawyer applicants.

The suggested amendments would make a substantive change to the amount of

time LLLT applicants may take to complete preadmission requirements after the date they pass their licensing examination. Under current APR 28(E), LLLTs have three years (36 months) to complete preadmission requirements after passing their licensing examination; the suggested amendments to APR 5 would allow them 40 months. This relatively minor extension of the deadline to complete requirements is consistent with the lawyer deadline and would allow the Bar to unify administrative processes for the lawyer and LLLT licenses.

The suggested amendments would make a change to the deadline for completion of preadmission requirements for the LPO license, reflecting an effort to reduce the number of different deadlines and coordinate administrative procedures among the LPO and lawyer admission by motion and UBE transfer applicants. Currently, APR 12 Regulation 8 requires that all LPO license requirements be completed within nine months of passage of the licensing examination; this suggested amendment would give them an additional three months.

The suggested amendment to APR 5(e)(4) would contain information currently stated in the Admissions Policies adopted by the Board of Governors.

The suggested amendments also would strike the current text of APR 5(b) regarding preadmission deadlines for admission by motion or UBE transfer.

APR 5(f) and (g)

Currently, the oath in APR 5 only applies to prospective lawyers. Similar oath language for LPOs and LLLTs is currently contained in APR 12 and APR 28, respectively. The suggested amendments to APR 5(f) and 5(g) are meant to make the oath applicable to all license types. Accordingly, the suggested amendments would change the title of the oath from “oath of attorney” to “oath for the practice of law”, and

would add a sentence to the current “oath of attorney” regarding complying with any restrictions on the applicant’s license to practice law.

For LLLT applicants, the suggested amendments would add the language in the Oath, paragraph 6, to the language of the oath currently set forth in APR 28.

For LPO applicants, the current oath for LPOs is in APR 12 Regulation 8(B), and focuses on potential liability as well as limitations on services. The oath in the suggested amendments to APR 5 includes an affirmation to disclose the limitations on services without specifically addressing liability. Because LPOs are required to submit documentation showing that they are covered by liability insurance or can personally cover claims before they can be licensed, having a term in the oath that would address liability issues seems unnecessary.

APR 5(h)

The suggested amendments to APR 5 would move the “Recommendation for Admission” section from APR 5(a) to APR 5(h) a recommendation for admission will only occur after the applicants have completed the applicable pre-admission requirements stated elsewhere in the suggested amendments to APR 5.

Throughout the text of the suggested amendments to the “Recommendation for Admission” section, the tasks formerly performed by the Board of Governors are now assigned to the Bar, a reflection of the administrative reality of these functions. Other suggested amendments include changing “shall recommend…the admission or rejection of each applicant who has been approved for admission by motion” to “shall recommend…. the admission or rejection of each applicant ……who qualifies for and has been approved for admission without passing an examination”. This amendment captures those who are admitted by motion, while also encompassing those who are

admitted by transferring their UBE score from another jurisdiction.

APR 5(i)

The suggested amendments would reflect the current practice of accepting electronically submitted applications and documentation, and would designate the Bar as the entity that transmits the recommendation to the Supreme Court.

APR 5(j)

With these suggested amendment, the first sentence of the current APR 5(f), which states that there is no residency requirement to practice law in Washington, would make up the entirety of APR 5(j).

Text currently included in APR 5(f) is contained in the suggested amendments to APR 13. The GR 9 coversheet for the suggested amendments to APR 13 contains a discussion of suggested changes to the requirements for nonresident lawyers, LLLTs, and LPOs.

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

F. **Supporting Material:** Cover letter from Paula C. Littlewood transmitting suggested amendments to APRs.

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 5. ~~RECOMMENDATION FOR~~ PRE-ADMISSION REQUIREMENTS; OATH; RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE LAW; ~~PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT~~

(a) ~~Recommendation for Admission.~~ ~~The Board of Governors shall recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination or been approved for admission by motion, and, who has complied with the preadmission requirements set forth in this rule. A recommendation for admission shall be based upon the Board of Governors determination, after investigation, that the applicant appears to be of good moral character and in all respects qualified to engage in the practice of law. All recommendations of the Board of Governors shall be accompanied by the applicant's application for admission and any other documents deemed pertinent by the Board of Governors or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall be kept by the Clerk of the Supreme Court in a separate file which shall not be a public record.~~

~~(b)~~ Preadmission Requirements. Before an applicant who has passed ~~the bar~~ an examination for admission, or who qualifies for admission without passing ~~the bar~~ an examination, may be admitted, the applicant must:

(1) pay to the Bar the annual license fee and any mandatory assessments ordered by the Supreme Court for the current year;

(2) file any and all licensing forms required of active lawyers, LLLTs or LPOs;

(3) take the Oath for the Practice of Law; an

(4) designate a resident agent if required to do so by APR 13.

(b) Lawyer applicants. In addition to the requirements in section (a) above, lawyer applicants must:

(1) take and pass the Washington Law Component (WLC). The duration, form and manner of the WLC shall be as prescribed by the Bar. The WLC minimum pass score is 80 percent; and

(2) complete a minimum of 4 hours of education in a curriculum and under circumstances approved by the BarBoard of Governors;

~~(3) pay to the Bar Association the annual license fee and any assessments for the current year;~~

~~(4) file any and all licensing forms required of active members;~~

~~(5) take the Oath of Attorney; and~~

~~(6) designate a resident agent if required to do so by section (f)~~.

(c) LLLT Applicants. In addition to the requirements in section (a) above, LLLT applicants must:

(1) demonstrate financial responsibility pursuant to APR 28I; and

(2) demonstrate completion of 3,000 hours of substantive law-related work experience pursuant to APR 28 Regulation 9.

(d) LPO Applicants. In addition to the requirements in section (a) above, LPO applicants must demonstrate financial responsibility pursuant to APR 12(f).

(e) Expiration of Preadmission Requirements. The preadmission requirements must be completed within:

(1) 40 months from the date of the administration of the examination for lawyer applicants;

(2) 40 months from the date of the administration of the examination for LLLT applicants;

(3) 12 months from the date of the administration of the examination for LPO applicants;

(4) 12 months from the date of filing the application, for lawyer applicants who apply by motion or UBE score transfer, except for good cause shown.

~~For applicants who take and pass the bar examination, the preadmission requirements must be~~

~~completed within 40 months from the date of the administration of the bar examination in which the score was earned. For applicants who apply by motion, the preadmission requirements must be completed within one year from the date of filing the application, except for good cause shown.~~

(f~~e~~) Oath for the Practice of Law~~of Attorney~~. The Oath for the Practice of Law ~~of Attorney~~ must be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington. In the event a successful applicant is outside the state of Washington and the Chief Justice is satisfied that it is impossible or impractical for the applicant to take the oath before an elected or appointed judge in this state, the Chief Justice may, upon proper application setting forth all the circumstances, designate a person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

(g~~d~~) Contents of Oath. The oath which all applicants shall take is as follows:

OATH FOR THE PRACTICE OF LAW ~~OF ATTORNEY~~

State of Washington, County of _____ ss.

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

2. I will support the constitution of the State of Washington and the constitution of the United States.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. If there are limitations on my license to practice law, I will confine my activities to those

permitted pursuant to my license to practice law and will faithfully disclose any limitations on my services.

6.~~5.~~ I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

7.~~6.~~ I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.

8~~7~~. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

9~~8~~. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____

(signature)

SUBSCRIBED AND SWORN TO before me this ___ day of _____, 20 ___.

_____

Judge

(h) Recommendation for Admission. The Bar shall recommend to the Supreme Court the

admission or rejection of each applicant who has passed an examination for admission or who qualifies for and has been approved for admission without passing an examination, and who has complied with the preadmission requirements set forth in this rule. A recommendation for admission shall be based upon the Bar's determination, after investigation, that the applicant has met all the requirements for admission and appears to be of good moral character and fit to engage in the practice of law. All recommendations of the Bar shall be accompanied by the applicant's application for admission and any other documents deemed pertinent by the Bar or requested by the Supreme Court. The recommendation and all accompanying documents shall be kept by the Clerk of the Supreme Court in a record which shall not be a public record.

(ie) Order Admitting to Practice. After examining the recommendation and accompanying documentation ~~papers~~ transmitted by the Bar ~~Board of Governors~~, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to the practice of law.

(jf) Nonresident Lawyers, LLLTs or LPOs~~; Resident Agent~~. There shall be no requirement that an applicant, lawyer, LLLT or LPO ~~or a member of the Bar Association~~ be a resident in the state of Washington. ~~Every member, except a judicial member, of the Bar Association who does not live or maintain an office in the state of Washington shall file with the Bar Association the name and address of an agent within this state for the purpose of receiving service of process or of any other document required or permitted by statute or court rule to be served or delivered to a resident lawyer. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer.~~

2009

The Lawyer's Oath: Both Ancient and Modern

Carol Rice Andrews
University of Alabama - School of Law, candrews@law.ua.edu

ARTICLES

The Lawyer's Oath: Both Ancient and Modern

CAROL RICE ANDREWS*

TABLE OF CONTENTS

---

* Professor of Law, University of Alabama School of Law. I am grateful for the financial support of Dean Ken Randall, the Law School Foundation, and particularly the William Sadler Fund. I also thank the faculty, students and library professionals at the University of Alabama School of Law, who have assisted my ongoing study of historical legal ethics standards.

All lawyers take an oath upon their admission to the bar. The oath is literally a rite of passage that marks the transition from student to practitioner of law. It is a solemn promise of ethical conduct by the lawyer. The oath dates back to the ancient beginnings of the legal profession and is a tradition in both form and substance. Indeed, many lawyers today swear to a "do no falsehood" oath, which is substantially the same as one recorded over 350 years ago in a 1649 English book that reported oaths "both ancient and modern."[1] The oath once was the

1. The 1649 "Book of Oaths" stated the following attorney's oath:

You shall do no falsehood, nor consent to any to be done in the Court, and if you know of any to be done you shall give knowledge thereof unto my Lord Chief Justice, or other his Brethren, that it may be reformed; you shall delay no man for lucre and malice; You shall increase no fees but shall be contented with old Fees accustomed; You shall plead no Forraigne Plea, nor suffer no Forraigne suits unlawfully to hurt any man, but such as shall stand with order of the Law, and your conscience: You shall seale as such Process as you shall sue out of the Court with the Seale thereof, and see the Kings

principal source of ethical regulation of lawyers, but it is now an often overlooked part of the labyrinth of laws and standards governing lawyer conduct. The modern oath does not live up to its potential. Relatively modest refinements would enhance the role of the oath so that it can better inspire lawyers to the ethical ideals of their profession.

This article examines the historical and modern lawyer oaths.[2] Part I tracks the evolution of lawyer oaths in Europe from antiquity to the nineteenth century. Ancient society used oaths as means to guarantee truth and to assure trust in office holders. Both roles applied to ancient legal advocates. The role of advocates faded as the ancient empires fell, but when lawyers began to reappear in medieval Europe, so did their oaths. Oaths became the principal form of lawyer regulation in the late Middle Ages. These oaths were "condensed codes of ethics,"[3] under which lawyers swore to abide by a relatively detailed list of conduct standards. The English oaths focused almost exclusively on civil litigation, stating duties not only to clients but also to the court. The central vow of the most common English oath was to "do no falsehood." The French oaths focused similarly on litigation, but they were broader than the English oaths and typically included both a duty of public service and a duty to maintain only "just" causes. By the nineteenth century, both England and France moved to a simple form of oath, in which the lawyer stated a general promise of good conduct, but some European nations, such as Switzerland, kept the tradition of the detailed oath.

Part II examines lawyer oaths as they evolved in the United States before the twentieth century. Colonial oaths typically were a variation on the traditional English detailed "do no falsehood" oath, and post-revolutionary oaths tended toward the English simple form of oath. During this era in the United States, legal

---

Majesty, and my Lord Chief Justice discharged for the same; You shall not wittingly or willingly sue, nor procure to be sued any false Suit, nor give aide nor consent to the same, in pain of being expulsed from the Court forever: And furthermore you shall use and demean your self in the office of an Attorney within the Court according to your Learning and discretion; So help You God etc.

THE BOOK OF OATHS AND THE SEVERAL FORMS THEREOF, BOTH ANCIENT AND MODERN FAITHFULLY COLLECTED OUT OF SUNDRY AUTHENTIC BOOKS AND RECORDS NOT HERETOFORE EXTANT, COMPILED IN ONE VOLUME 29-30 (1649) [hereinafter BOOK OF OATHS].

2. In an earlier article, I surveyed standards of conduct since the Middle Ages, of which lawyer oaths were an important component. In that review, I identified six core ethical principles that have governed lawyer conduct for centuries: litigation fairness, competence, loyalty, confidentiality, reasonable fees and public service. *See* Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1387 (2004). I also collaborated on a publication addressing the seminal 1887 code of ethics promulgated of the Alabama State Bar Association. Carol Rice Andrews, *The Lasting Legacy of the 1887 Code of Ethics of the Alabama State Bar Association*, *in* GILDED AGE LEGAL ETHICS: ESSAYS ON THOMAS GOODE JONES' 1887 CODEAND THE REGULATION OF THE PROFESSION 7 (2003) [hereinafter GILDED AGE].

3. This description was coined by Josiah Henry Benton in 1909. JOSIAH HENRY BENTON, THE LAWYER'S OFFICIAL OATH AND OFFICE (1909). Benton's work was an extensive collection of original lawyer oaths. Throughout this article, I principally rely on and cite to the work of Benton and other historians. This article is a collection and analysis of the oaths reflected in those other studies, rather than original historical research.

ethics regulation and debate was minimal in comparison to the modern era, but to the extent that states regulated lawyer behavior and scholars debated legal ethics, the oaths were a part of that regulation and debate. In the second half of the nineteenth century, the Field Code codified an 1816 Swiss oath, drawn from the French oath tradition. The Field Code was a significant innovation in that it codified the concept of "just" causes, distinguished duties of criminal defense lawyers, and stated duties of confidentiality and public service. Many states used the Field Code as their model, which in turn prompted further debate and evolution of legal ethics.

Part III looks in relative detail at the ABA's 1908 model oath. At the turn of the twentieth century, state bar associations began to supplement the lawyer oaths and the Field Code statutes with detailed codes of ethics. The ABA followed this lead and in 1908 adopted model ethics standards, in the form of a model oath and Canons of Ethics. The model oath was a reworked version of the Field Code duties, and its "just" causes clause was at the center of the ABA's primary drafting debate—the proper advocacy roles of lawyers. The model oath originally had equal prominence with the Canons; it was the regulatory portion of the 1908 ethics compilation. Today the model oath has fallen into the shadows of the more detailed "black letter" *Model Rules of Professional Conduct.*

Part IV concludes with a survey and critique of modern lawyer oaths. Modern oaths are surprisingly similar to oaths taken centuries ago. Lawyers in the United States swear to one of three basic forms of oath—the English simple oath, the English "do no falsehood" oath, or the Swiss (ABA) detailed oath. Unlike many other professional oaths, the lawyer's oath has some force of law; in most states, statutes require lawyers to take the oath as a condition of their licensure and mandate punishment for oath violations. The oath also performs ethical functions. Although no longer the principal source of ethical guidance for lawyers, the oath is both a reminder of and a promise to abide by core ethical precepts. Unfortunately, some oaths are flawed in that they do not unequivocally state the essential ideals of the profession. Minor adjustment to both the language and administration of current oaths would allow the oath to build on its traditional function and inspire lawyers to their core ethical ideals.

I. EVOLUTION OF LAWYER OATHS IN EUROPE

Lawyer oaths have been a part of the legal profession in Europe from the time legal advocates first appeared. Oaths played important roles generally in ancient civilization, particularly in litigation, and as professional advocates began to appear in litigation, they also took oaths to maintain truth and fairness during litigation. When the ancient empires declined, the legal profession ebbed, but oaths, taken by the litigants themselves, continued to play a prominent role in litigation. As professional advocates began to reappear in medieval Europe, their oaths returned. Like the ancient oaths, the medieval oaths centered on ethics in

litigation, principally civil litigation, and they were relatively detailed in their dictates as to proper litigation behavior. The English oaths prohibited litigation falsehoods and misconduct, and the French oaths added a broader ideal of "just" causes. Over time, some oaths, particularly the French oaths, added other elements, such as duties to the poor. The detailed lawyer oaths eventually faded in Europe. Both England and France moved to simple oaths by the early nineteenth century. However, the detailed oaths did not disappear. In 1816, Switzerland formulated a detailed oath, based on the older French oaths, that later would have widespread and lasting influence in America.

A. THE ORIGINS OF LAWYER OATHS

Oaths are an ancient tradition.[4] The ancient oath-taker invited a Supreme Being,[5] including a variety of ancient pagan deities,[6] to both witness his declaration and punish him if the statement proved false or he did not fulfill his promise.[7] According to an ancient fable, the oath was the only means upon which mere mortals could be trusted.[8] A nineteenth century writer argued that oaths must be of divine origin because oaths were both pervasive—used by "almost every tribe and nation upon earth,"[9]—and well-established by the time of the "earliest history records."[10]

---

4. For discussion of the general use of oaths throughout history, *see* JAMES ENDELL TYLER, OATHS; THEIR ORIGIN, NATURE, AND HISTORY (London, John W. Parker 1834); HELEN SILVING, ESSAYS ON CRIMINAL PROCEDURE (1964); JOSEPH PLESCIA, THE OATH AND PERJURY IN ANCIENT GREECE (1970). *See generally* MATTHEW A. PAULEY, I DO SOLEMNLY SWEAR: THE PRESIDENT'S CONSTITUTIONAL OATH (1999).

5. *Cf.* SILVING, *supra* note 4, at 4 (reporting that the oath originated as a self-curse, as opposed to an appeal to a deity, because "[s]upernatural beings were unknown, and man believed that he possessed magic power which could produce any desired result").

6. *See generally* PAULEY, *supra* note 4, ch. 3 (surveying oaths to Greek and Roman deities).

7. Cicero is reported to have said that "an oath 'is an assurance backed by religious sanctity; and a solemn promise given, as before God as one's witness, is to be sacredly kept' " William R. Nifong, Note, *Promises Past: Marcus Atilius Regulus and the Dialogue of Natural Law*, 49 DUKE L.J. 1077, 1103-04 (2000) (quoting Cicero). *See also* TYLER, *supra* note 4, at 9 ("It is the calling upon God to witness, i.e., to take notice of what we say, and it is invoking his vengeance, or renouncing his favour, if what we say be false, or what we promise be not performed" (quoting Dr. Paley)) (emphasis in original).

8. Tyler recounted this fable:

> Horcus, or the God of Oaths, is said to be the son of Eris, or Contention; and fables tell us, that in the golden age, when men were strict observers of the laws of truth and justice, there was no occasion for oaths, nor any use made of them, But when they began to degenerate from their primitive simplicity, when truth and justice were banished out of the earth, when every one began to take advantage of his neighbor by cozenage and deceit, and there was no trust to be placed in any man's word, it was high time to think of some expedient, whereby they might secure themselves from the fraud and falsehood of one another; hence has oaths had their origin.

TYLER, *supra* note 4, at 7 n.* (quoting Potters *Antiq.*, b.ii. c.6).

9. D.X. JUNKIN, THE OATH: A DIVINE ORDINANCE, AND AN ELEMENT OF THE SOCIAL CONSITUTION: ITS ORIGIN, NATURE, ENDS, EFFICACY, LAWFULNESS, OBLIGATIONS, INTERPRETATION, FORM AND ABUSES, 15 (New York, Wiley & Putman 1845).

10. *Id.* at 16 (citing early biblical references).

The ancient oath secured trust, which was important both in asserting facts and in making promises.[11] Ancient oaths therefore took two primary forms: declaratory and promissory.[12] When taking the declaratory oath, the oath-taker vowed to the truth of a matter. In ancient litigation, the parties swore to the veracity of their evidence and the merit of their claims, and in some cases, the oath decided the case.[13] When taking the promissory oath, the oath-taker swore to do something in the future. A promissory oath had obvious uses in commerce, but it also promised ethical conduct by office holders and the emerging professional class.[14] The most prominent example of the ancient professional promissory oath is the "Hippocratic oath," by which Greek physicians, beginning in the fifth century B.C., swore to abide by a variety of ethical principles.[15]

Both aspects of the oath applied to early legal advocates.[16] Because lawyers were involved in litigation, their oaths reflected the truth function, and as professionals, their oaths stated standards of professional deportment. Roman advocates, for example, solemnly exhorted "to avoid artifice and circumlocution,"[17] to not use "injurious language or malicious declamations against his adversary," and not "to employ any trick to prolong the cause."[18] Likewise, ancient Greek advocates reportedly swore to "represent the bare truth, without

---

11. "Through all the diversified stages of society, from the lowest barbarism to the highest cultivation of civilised life . . . recourse has been had to Oaths as affording the nearest approximation to certainty of evidence, and the surest pledge of the performance of a promise." TYLER, *supra* note 4, at 6-7.

12. *See id.* at ch. IX (defining assertory and promissory oaths). *Cf.* PLESCIA, *supra* note 4, at 13-14 (discussing types of oaths).

13. Tyler reported that "ancient Greek and Roman authors" spoke of oaths "by which the plaintiff or defendant in a suit, either at the desire of his antagonist, or by the direction of the judge, pleads himself to the justice of his cause, or confesses or denies some material point." Tyler, *supra* note 4, at 236 n.* *See also* Plescia, *supra* note 4, at 40-53 (reporting that in ancient Greece, the oath sometimes merely attested to the veracity of the evidence or the sincerity of the claims, but that at other times, the oath decided the case, through oath challenges and otherwise).

14. *See* PLESCIA, *supra* note 4 (describing ancient Greek oaths of citizenship and public office); Nifong, *supra* note 7, at 1093-1105 (describing the role of oath as a "sacred" form of); TYLER, *supra* note 4, at 297-300 (describing promissory oaths of ancient office holders).

15. There is modern disagreement as to the content and origin of the oath attributed to Hippocrates. *See* Robert D. Orr et al., *Use of the Hippocratic Oath: A Review of Twentieth Century Practice and a Content Analysis of Oaths Administered in Medical Schools in the U.S. and Canada in 1993*, 8 J. CLINICAL ETHICS 377 (1997). Most versions of the Hippocratic oath state detailed duties of the physician, including duties to maintain confidentiality ("whatsoever I shall see or hear in the course of my profession . . . I will never divulge, holding such things to be holy secrets") and to do no harm ("I will enter to help the sick, and I will abstain from all intentional wrongdoing and harm, especially from abusing the bodies of man or woman"). Charles J. McFadden, MEDICAL ETHICS, 461-62 (6th Ed, 1968).

16. Legal advocates initially faced hostility but eventually gained recognition and legitimacy in the ancient world. *See* ROBERT J. BONNER, LAWYERS AND LITIGANTS IN ANCIENT ATHENS ch. 10 (1927) (describing early Greek legal profession); ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES, 50-52 (West 1953) (discussing early Roman legal advocates).

17. BENTON, *supra* note 3, at 19 (reprinting oath in Latin and providing alternative translations, including "handle the cases of litigants without artfulness and with simple language without any circumlocution").

18. Joseph Cox, *Legal Ethics*, 19 THE WKLY. L. BULL. AND THE OHIO L.J. 47, 49 (Columbus, Capital Printing & Pub. 1888) (quoting a Roman oath).

any ornament or figure of rhetoric, or insinuating means to win the favor or move the affection of the judges."[19]

By the end of the Roman Empire, the advocate's oath was remarkably similar to modern oaths. An oath reportedly used in the era of Justinian (sixth century A.D.) required advocates to swear that:

> [T]hey will undertake with all their power and strength, to carry out for their clients what they consider to be true and just, doing everything with it is possible for them to do. However, they, with their knowledge and skill, shall not prosecute a lawsuit with a bad conscience when they know [beforehand] that the case entrusted to them is dishonest or utterly hopeless or composed of false allegations. But even if, while the suit is proceeding, it were to become known [to them] that it is of that sort [i.e., dishonest], let them withdraw from the case, utterly separating themselves from any such common cause.[20]

The Justinian oath spoke exclusively to litigation candor and fairness, and in doing so, it stated a rather sophisticated balance of the lawyer's duties to client and court, including duties to pursue "just" objectives and to withdraw from "dishonest" causes. Justice Story, writing more than one thousand years later, proclaimed the Justinian oath as "well worthy . . . for the consideration of Christian lawyers in our day."[21]

At some point, the legal profession faded or perhaps disappeared altogether in Europe.[22] In the early Middle Ages, litigation was a relatively primitive form of dispute between the parties, wherein litigants appeared for themselves without outside help.[23] Oaths did not disappear. To the contrary, oaths were an important part of litigation, but they were made by the litigants or witnesses.[24] Oaths played a variety of roles in early Anglo-Saxon litigation, sometimes serving as a ritualistic form of proof or as the judgment itself.[25] In some uses, the oath was tested, often with

---

19. *Id.*

20. JOSEPH STORY, COMMENTARIES ON THE LAW OF AGENCY, AS A BRANCH OF COMMERCIAL AND MARITIME JURISPRUDENCE, WITH OCCASIONAL ILLUSTRATIONS FROM THE CIVIL AND FOREIGN LAW 26, n.1 (Boston, Little & Brown 1832) (quoting Justinian Code) (translated from Latin in Story's text). The oath may reflect earlier Roman practice as to the advocate's oath. Although Justinian ruled in the sixth century, his Justinian Code purported to capture Roman law going back to the time of Hadrian, in the second century, AD. For a concise summary of the Justinian Code, *see* O.F. ROBINSON ET AL., EUROPEAN LEGAL HISTORY ¶¶ 1.2.1-1.2.2 (3rd ed. 2000).

21. STORY, *supra* note 20, at 26, n.1.

22. *See* HERMAN COHEN, A HISTORY OF THE ENGLISH BAR AND *ATTORNATUS* TO 1450 1-19 (1929) (reviewing the possible role of lawyers in the Anglo-Saxon period and noting the "darkness" of the age and need for "guesswork").

23. POUND, *supra* note 16, at 61 (noting that "Germanic law brought back into Western Europe the ideas of primitive law as to representation in litigation" under which parties conducted their own cases). *See generally* 2 FREDERICK POLLOCK & FREDERIC MAITLAND, THE HISTORY OF ENGLISH LAW 598-610 (2d ed. 1923) (describing the ancient modes of proof through ordeal, battle, and wager at law).

24. MAURIZIO LUPOI, THE ORIGINS OF THE EUROPEAN LEGAL ORDER, § 11.2, 339-40, 343-49 (Adrian Belton trans., Cambridge Univ. Press 2000) (describing the oath in litigation between the fifth and eleventh centuries).

25. *See* SILVING, *supra* note 4, at 57 (noting that the "oath played a role in several" forms of proof, which included the oath of "witnesses; the party's oath, with or without fellow-swearers; the ordeal; and battle.").

God sitting in judgment and a potential penalty of eternal damnation.[26]

In the late Middle Ages, litigation modernized and lawyers began to emerge again as a profession. In late twelfth century England, for example, courts were formal and centralized, pleadings were complex, and legal argument was common.[27] These developments caused English litigants to seek assistance from others—first from friends and then from professionals.[28] By the early thirteenth century, outside professional legal assistance was routine in English and likely other European courts.[29] As lawyers re-emerged, so did their professional oaths.

B. LAWYER OATHS IN EUROPE FROM THE MIDDLE AGES UNTIL THE COLONIAL PERIOD

The lawyer oaths of the early thirteenth century picked up where the ancient advocate oaths left off. An early example is the oath dictated in 1221 by Holy Roman Emperor Frederic II. He reportedly set forth the following oath, to be renewed every year by advocates:

> That the parties whose cause they have undertaken they will, with all good faith and truth, without any tergiversation, succour; nor will they allege any thing against their sound conscience; nor will they undertake desperate causes, and, should they have been induced, by misrepresentation and the colouring of the party to undertake a cause which, in the progress of the suit, shall appear to them, in fact or law, unjust, they will forthwith abandon it. Liberty is not to be granted to the abandoned party to have recourse to another advocate. They shall also swear that, in the progress of the suit, they will not require an additional fee, nor on the part of the suit enter into any compact; which oath it shall not be

---

26. PAUL BRAND, THE ORIGINS OF THE ENGLISH LEGAL PROFESSION 4 (1992) (describing litigation in the Anglo-Norman period as an exchange of pleadings followed by an "oath being put to the proof by compurgation, ordeal or trial by battle" and noting that "[b]ecause it was God who was judging between the parties, there was no need for the defendant to make any other kind of defence"); Ellen E. Sward, *Values, Ideology, and the Evolution of the Adversary System*, 64 IND. L. J. 301, 320 (1989) (describing trial by ordeal, where a litigant's oath was tested by such means as enduring a "red-hot iron," and noting that in the "wager of law, the oath was "everything" for the "penalty for a false oath was thought to be eternal damnation").

27. *See generally* BRAND, *supra* note 26, at 14-43 (addressing emerging legal profession in England).

28. Outsiders assisted litigants to some degree in the twelfth century and perhaps before. 1 Pollock & Maitland, *supra* note 23, at 211 (noting that "[b]efore the end of the thirteenth century there already exists a legal profession, a class of men who take money by representing litigants before the courts and giving legal advice"); W.W. Boulton, *The Legal Profession in England: Its Organization, History and Problems*, 43 A.B.A.J. 507, (1957) (noting that in "Norman times (eleventh-thirteenth centuries) it was quite common for a party to have assistance in the conduct of his case, but this was given by a friend, not by a professional expert").

29. Most historians cite the thirteenth century as the origin of the legal profession, at least in England. *See* J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 177-79 (1990); BRAND, *supra* note 26, at 2-5, 46. Lawyers were legitimized earlier in France. In 802, France first provided for professional lawyers, providing "that nobody should be admitted therein but men, mild, pacific, fearing God, and loving justice, upon pain of elimination." BENTON, *supra* note 3, at 13-14.

> sufficient for them to swear once only, but they shall renew it every year before the officer of justice.[30]

This oath resembled the Justinian oath—imposing a duty of candor to the court that overrode the lawyer's advocacy duties on behalf of the client—and it added a dictate as to fee practice. This oath directly regulated lawyer conduct. Violation of the oath resulted in disbarment "with the brand of perpetual infamy" and a fine of "three pounds of the purest gold."[31] Similar oath practices may have been pervasive in Europe by the end of the thirteenth century; oaths were unquestionably present in the ecclesiastical and lay courts of both England and France during this period.

1. THE ENGLISH LAWYER OATHS

In England, as in many parts of Europe, the most prominent early use of advocate oaths was in the ecclesiastical courts.[32] In 1234, the council in St. Paul's, London decreed that every ecclesiastical advocate swear that he "will plead faithfully, not to delay justice or to deprive the other party of it but to defend his client both according to law and reason."[33] In 1273, the Court of Arches in London introduced a more detailed oath for lawyers in the ecclesiastical courts.[34] In this and similar English ecclesiastical oaths, litigation fairness was the central theme. Ecclesiastical advocates swore to bring only "true and just" causes, to not seek unjust delays, and to not knowingly infringe on ecclesiastical liberties. Additional client concerns also emerged. The advocates swore that they would diligently and faithfully serve their clients, not charge excessive fees, and not take a stake in the litigation.[35]

---

30. BENTON, *supra* note 3, at 19-20 (reprinting oath); Tyler, *supra* note 4, at 300-01 (same).

31. BENTON, *supra* note 3, at 19-20.

32. *See* BRAND, *supra* note 26, at 146 (noting that while "admission oaths had been required of advocates in late antiquity," they "were not revived in Western Europe until the thirteenth century" and the revival came first in the ecclesiastical courts) (citing unpublished papers of James A Brundage).

33. The decree also warned that advocates who "suborn witnesses, or instruct the parties to give false evidence, or to suppress the truth" would be suspended from office and subjected to additional punishment for repeated violations. BENTON, *supra* note 3, at 14-15.

34. BENTON, *supra* note 26, at 147 (paraphrasing oath and noting that the 1273 oath "was much fuller than any of the preceding English oaths and consisted of five separate clauses").

35. *Id.* Benton reports the oath dictated by the Archbishop of Canterbury in 1295:

> [In addition to the oath of judges, advocates must swear] that they will observe the aforesaid customs and statutes, as far as they affect them, and that they will bring no case to trial, unless they believe it to be true and honest, upon the information on the part of their clients; that, in receiving information from their clients, they will elicit from them, with all possible caution, the truth of the case, and they will clearly show their clients the dangers to which they expose themselves in legal proceedings as far they know, declining to prosecute any further desperate, bad cases, and as soon as the cases or surrounding conditions show themselves to be unjust from the point of view of the law; they shall relinquish them entirely.

BENTON, *supra* note 3, at 23-24.

Early English lawyers took similar oaths in the lay courts. First, as to the early form of English lawyers known as pleaders or serjeants (the predecessors of the modern barrister),[36] Parliament first regulated their practice in 1275 through the Statute of Westminster, which provided for imprisonment of pleaders if they were guilty of "deceit or collusion in the King's courts."[37] Although the statute did not mandate an oath, thirteenth century pleaders in England's courts took oaths. Sir Coke reported that the early pleader or serjeant swore generally to "truly and well serve the King's people" and to "not delay causes for money."[38] Another reported pleader's oath of the era had more detail, including that the pleader "will not knowingly maintain or affirm a wrong or falsehood, but will abandon his client immediately that he perceive wrongdoing."[39] In 1280, the *Liber Custumarum*,[40] a London ordinance, required pleaders to take an oath, upon penalty of disbarment, that they would abide by several listed duties, including the duty to "make proffers at the bar without baseness and without reproach and foul words and without slandering any man."[41]

Parliament also regulated the early English lawyers known as attorneys (the predecessor of modern solicitors).[42] In 1402, Parliament formally required that

---

36. English lawyers were known by different names depending on their function and era. Generally speaking, early pleaders or serjeants evolved into modern day barristers, and attorneys evolved into solicitors. Ecclesiastical courts made a similar distinction between advocates and proctors. *See* Andrews, *supra* note 2, at 1390-92 (describing different roles of English lawyers).

37. 3 James I (1605) provided:

> If any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a yeare and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at least; and if the trespass require greater punishment, it shall be at the king's pleasure.

1 ANTON-HERMANN CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 316 (University of Oklahoma Press) (1965) (quoting statute).

38. In discussing the 1275 statute, Sir Coke explained that pleaders and pleaders (serjeants) took the following oaths:

> Ye shall swear, that well and truly ye shall serve the King's people as one of the Serjeants at the Law, and ye shall truly council them that ye shall be retained after your Cunning; and ye shall not defer, tract, or delay their causes willingly, for covetous of money, or other thing that they may turn you a profit; and ye shall give due Attendance accordingly; a god you help, and by the Contents of this Book.

EDWARD COKE, SECOND INSTITUTE OF THE LAWS OF ENGLAND 213 (1809); BENTON, *supra* note 3, at 11, 26 (quoting similar serjeant's oath in the Roll of oaths).

39. THE MIRROR OF JUSTICE (Selden Society 1893) (stating thirteenth century standards of conduct for pleaders, including an oath that the pleader "will not knowingly maintain or affirm a wrong or falsehood, but will abandon his client immediately that he perceive wrongdoing").

40. *See* Cohen, *supra* note 22, at 231-34 (1929) (reprinting *Liber Custumarum*).

41. *Id.*

42. *See supra* note 36 (discussing distinctions between early pleaders and attorneys).

attorneys take an oath.[43] The 1402 Act did not specify any form of the attorney's oath,[44] but the oath probably was some form of the following pledge to "do no falsehood:"

> You shall doe noe Falsehood nor consent to anie to be done in the Office of Pleas of this Courte wherein you are admitted an Attorney. And if you shall knowe of anie to be done you shall give Knowledge thereof to the Lord Chiefe Baron or other his Brethren that it may be reformed you shall Delay noe Man for Lucre Gaine or Malice; you shall increase noe Fee but you shall be contented with the old Fee accustomed. And further you shall use yourselfe in the Office of Attorney in the said office of Pleas in this Courte according to your best Learninge and Discrecion. So helpe you God.[45]

This attorney's oath went beyond barring falsehoods in litigation. The oath required the attorney to affirmatively report any falsity to the court ("you shall give knowledge thereof . . . that it may be reformed"). The oath also barred delays ("delay no man for lucre, gain or malice"), limited fee practices ("you shall increase no fee but you shall be contented with the old fee accustomed"), and pledged competence ("best learning and discretion").

The English oaths, whether the attorney's "do no falsehood" oath or the various oaths of the English pleaders and serjeants, spoke primarily to litigation. Some, such as the "do no falsehood" oath, also spoke to fees and competence, but none of the English oaths addressed confidentiality, conflicts of interest, or public service. Although aimed at litigation, the English oaths did not address two notable litigation issues. First, the predominant English oaths did not require a lawyer to assess the justness of his client's otherwise meritorious cause. By contrast, the French oaths of the era stated a "just" causes duty.[46] The early English ecclesiastical oaths suggested such a duty, but after the fourteenth century, English oaths apparently did not impose a "just" causes duty.[47] Second, the English oaths spoke primarily to civil litigation and did not speak directly to a lawyer's litigation duties in criminal cases. This is likely because early English

---

43. The 1402 Act addressed "attorneys ignorant and not learned in the law" and reportedly was the first to provide for admission of attorneys by the courts upon examination, an official oath and regulation of the conduct of attorneys. BENTON, *supra* note 3, at 27.

44. The Act stated that attorneys shall be "sworn well and truly to serve in their offices. *Id.* Professor Moliterno reported that the 1402 act required an attorney to take an oath to be "good and virtuous, and of good fame." James E. Moliterno, *Lawyer Creeds and Moral Seismography*, 32 WAKE FOREST L. REV. 781, 785-86 n. 37 (1997).

45. BENTON, *supra* note 3, at 28. Benton reported that the "do no falsehood" oath was used under the 1402 Act, that it was used from a "very early period, perhaps as early as the year 1246," and that the oath was "doubtless framed and in use certainly from the time of the Act of Henry IV in 1402." *Id. See also* BOOK OF OATHS, *supra* note 1 (reprinting 1649 version of "do no falsehood" oath).

46. *See infra* notes 56-59.

47. Brand's paraphrasing of the 1273 Court of Arches oath suggested a "just" causes duty, and a 1295 Archbishop of Canterbury oath imposed a duty for the lawyer to maintain causes that he believed to be "true and just." *See supra* notes 32-35.

lawyers did not frequently represent criminal defendants. In fact, at English common law in capital cases, the accused had to appear by himself and could not have counsel.[48] There was some lawyer representation of the accused in other settings, but the right to counsel was not formally recognized in England until the nineteenth century.[49]

Some version of the "do no falsehood" oath was the usual attorney's oath in England for at least three hundred years, until 1729, when "An Act for the Better Regulation of Attorneys and Solicitors" replaced the older oath with a new, simple oath. In the new oath, English attorneys and solicitors swore: "that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability."[50] The reason for the formal shortening of the attorney's oath is a bit of a mystery. It likely did not signify a rejection of the ethical standards stated in the "do no falsehood" oath. Instead, the shortened attorney's oath may have been a more concise means to convey the entire litany of professional standards expected of English attorneys.[51] The simplification also may have been a reaction to the multiplicity of oaths then in use[52] since lawyers took many oaths at that time.[53] English citizens as a whole took oaths for all sorts of purposes, causing critics to call for reform of oath practices in general.[54]

Although the "do no falsehood" oath fell out of practice in England, it did not

---

48. 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 352 (Univ. Chicago Press, 1979) (Facsimile of the First Edition, 1769) ("it was anciently and commonly received practice, (derived from the civil law, which also to this day obtains in the kingdom of France) that . . . counsel was not allowed to any prisoner accused of a capital crime.").

49. Before the nineteenth century, criminal defendants typically defended themselves in England, with only a few exceptions: "star chamber" required counsel, counsel was allowed for trial of certain minor crimes, and ecclesiastical courts had jurisdiction over, and allowed counsel regarding, trials of "mortal sins." *See* Faretta v. California, 422 U.S. 806, 821-27 (1975) (recounting history of self-representation and limited right to counsel in England before the nineteenth century).

50. 2 Geo. 2, ch. 23, §§ 13, 14 (1729). The Act stated that this new form of oath was to be used "instead of the oath heretofore usually taken by the attorneys of such courts respectively." *Id. See also* Moliterno, *supra* note 44, at 786, n.38.

51. The detailed oath was the primary and most constant source of formal ethical dictates, but English lawyers had other sources of ethical guidance and regulation. *See* Andrews, *supra* note 2, at 1394-1409.

52. Benton attributed the change to the short oath as "a reaction against the multiplicity of oaths imposed by law and of oaths taken without warrant of law." Benton, *supra* note 3, at 9. *See also* Leonard Goodman, *The Historic Role of the Oath of Admission*, 11 AM. J. LEGAL HIST. 404, 409 (1967) (stating that the oath mandated by the 1729 Act "was not the only oath required of the prospective attorney or solicitor; apparently what was lacking in the quality of the initial oath was thought to be found in the quantity of the required oaths").

53. In 1830, English lawyers took more than twenty-four required oaths, primarily oaths of allegiance and numerous oaths of office, rather than detailed ethics oaths. Goodman, *supra* note 52, at 409.

54. The criticism grew and took on religious tones by the early nineteenth century. *See* ENOCH LEWIS, OBSERVATIONS ON LEGAL AND JUDICIAL OATHS 5-6 (1848) (criticizing widespread use of oaths as unnecessary invocations of God's name: the "numerous trifling, not to say frivolous occasion on which oaths are legally required, must inevitably impair, if not totally annihilate, the sense of reverence with which the sacred Name ought always be expressed"); Tyler, *supra* note 4, at 86 (arguing in 1834 that oaths "be confined to oaths strictly and properly judicial, and to such promissory oaths of office as relate to the more important and solemn offices of state").

disappear. The "do no falsehood" oath was the principal form of oath used in the American colonies and was the only detailed oath used in the United States in the early nineteenth century. In fact, a number of jurisdictions in the United States still use a variation of the "do no falsehood" oath.[55]

2. LAWYER OATHS IN FRANCE, SWITZERLAND AND OTHER EUROPEAN NATIONS

In France, the lawyer's oath followed an evolution similar to that of English oaths, but the French oaths stated a somewhat broader range of duties. As in England, the practice of oath-taking revived in the Middle Ages and did so first in the ecclesiastical courts. In 1231, the Council of Rouen issued a decree requiring an oath by ecclesiastical advocates. It principally addressed litigation candor and fairness, including both duties to refrain from false pleas and to "not support cases that are unjust or militate against his conscience."[56] In the same year, the Bishops at the Council of Chateau-Gontier required a similar oath.[57]

In 1274, King Philip III enacted an ordinance to protect the King's subjects and "to deter those who . . . offer their professional services, from maliciously

---

55. *See infra*, Part IV(A)(2) (discussing modern use of "do no falsehood" oath).

56. The Council of Rouen decreed:

> Every single advocate shall swear that he will faithfully perform his duties; that he will not support cases that are unjust or militate against his conscience; that he will not abstract (embezzle) documents of his party (client), nor cause such to be abstracted; that he will not, to his knowledge, use false pleas, or such as have been malitiously excogitated; that he will not bring it about that falsehoods and surreptions be made, or that false documents be produced in his case; nor that he will prolong (delay) the case of his client as long as he believes that he is acting in the interest of the client himself; and that in those matters which shall be transacted in court and concerning which requirements are made of him by the Judges, he will not silence the truth according to his belief; and that if he become convinced of being inadequate to the handling of the case, he will have conference with the procurators; and that he will prepare with his own hand a journal and the acts in cases which he has taken, as faithfully as possible; or that he will cause them to be written out, in case he be neither able nor willing to do so himself.

BENTON, *supra* note 3, at 20-21.

57. Reform Canon 36, "concerning the Oath of the Advocates," stated:

> The advocates who in accordance with usage receive pay, shall by no manner of means be admitted, unless they have been sworn in. The formula for such an oath is thus: That they shall not favor (take) knowingly cases that are not just; nor shall they bring about, with malice aforethought, undue delay or haste in the conduct of cases by means of false oath, rather than stand by the truth. Nor shall they instruct their client toward malitious answer or statement; nor shall they after the published attestations, or at any stage of the trial, nor even before the oath suborn witnesses, or cause them to be suborned. Nor shall they permit their client to produce false witnesses; and if they should gain knowledge thereof, they shall reveal such to the court. If memorials are to be made they shall do so in good faith, and not withdraw from court malitiously, until the memorial be completed and admitted in court. Clients they shall expedite to the best of their ability, and in good faith. Nor shall they bother the Judge with objections, believing that they will give in to them. They shall sustain the honor of the court, nor perpetrate in court a falsehood.

Id. at 21-22.

protracting legal contests or charging immoderate fees."[58] The ordinance's principal mode of operation was an oath requiring lawyers to swear to pursue only "just" causes:

> We have it ordained and made a statute that all and each one exercising the functions of attorney either in your court or in that of bailiffs and our aforementioned officials, that is, in the courts of judges, shall swear upon the Sacred Gospels the oath, viz.:
>
> That in all cases which are being tried in said courts before which they have practiced in the past or shall practice, they will perform their duties bona fide diligently and faithfully as long as they have reason to believe their case to be just.
>
> They shall not bring any case into said courts either as defending or counseling lawyers unless they shall have believed it to be just; and, if at any stage of the trial the case appears to them unjust, or even intrinsically bad, they shall discontinue to further defend it, withdrawing from said case entirely as defending or counseling lawyers.
>
> Whosoever declines to swear in accordance with this formula, shall take cognizance, that in said courts they are disbarred, as long as they persist in this state of mind.[59]

The ordinance also commanded that lawyers swear to follow a maximum fee schedule and to repeat the oath every year.[60] In 1344, a French ordinance expanded the oath's litigation duties to include more specific prohibitions against "false citations," postponements "by subterfuge or malicious pretext," and contingent fees.[61] The French oath was expanded again in 1536 to include more general principles, such as a ban against conflicts of interest[62] and a duty to serve

---

58. *Id.* at 16-18.

59. *Id.* at 16-17.

60. *Id.* at 17.

61. Benton reported the 1344 oath ordinance as follows:

> Those advocates who are retained shall not be allowed to continue their practice unless they bind themselves by oath to the following effect: to fulfil their duties with fidelity and exactitude; not to take charge of any causes which they know to be unjust; that they will abstain from false citations; that they will not seek to procure a postponement of their causes by subterfuge, or malicious pretexts; that whatever may be the importance of a cause, they will not receive more than thirty livres for their fee, or any other kind of gratuity over and above that sum, with liberty, however, to take less; that they will lower their fees according to the importance of the cause and the circumstances of the parties; and that they will make no treaty or arrangement with their clients depending on the event of the trial.

Id. Edward S. Cox-Sinclair, *The Bar in the United States*, 32 THE LAW MAGAZINE AND REVIEW, 193 (1908) (reporting that the 1344 ordinance added: "They will not speak injurious words against adverse parties or others").

62. BENTON, *supra* note 3, at 17 ("advocates must not give advice to both parties under punishment of being heavily fined by financial penalties, suspension or loss of all their property"); Cox-Sinclair, *supra* note 61, at 193 ("They will not be for two parties").

the poor.[63] These detailed oaths continued in France until the early nineteenth century, when French advocates began using simpler oaths.[64]

Professional oath-taking by lawyers extended to other parts of Europe. In 1683, Christian V of Denmark and Norway promulgated the following detailed lawyer's oath that stated vows of fairness in litigation, reasonable fees, honesty and competence:

> [T]hat he will undertake no Cause he knows to be bad or iniquitous; that he will avoid all Fraud in pleading, bringing Evidence, and the like: That he will abstain from all Cavils, Quirks and Chicanery; and never seek by Absence, Delays or superfluous Exceptions, to procrastinate a Suit: That he will use all possible Brevity in transcribing Processes, Deeds, Sentences, etc.: That he will never encourage Discord, or be the least Hindrance to Reconciliation: That he will exact no exorbitant Fees from the Poor or others, And that he will act honestly, and to the best of his Power, for all his Clients.[65]

Germany also used lawyer oaths, as evidenced by the simple and very detailed forms of oath used in Germany in the late nineteenth and early twentieth centuries.[66] The detailed German oath stated several duties, including service to the poor, reasonable fees, promotion of settlement, litigation candor and fairness, confidentiality, and safe-keeping of client funds.[67]

An important European oath, in terms of its influence on American legal ethics,

---

63. Cox-Sinclair, *supra* note 61, at 193 ("They will serve the poor.").

64. The French oaths changed as the governments changed in France, but a predominant oath of the nineteenth century was a simple oath that generally spoke of competence and litigation fairness. *See* BENTON, *supra* note 3, at 119-21 (reporting early nineteenth century French oaths).

65. BENTON, *supra* note 3, at 24-25. *See* 192 (ABA dissemination of 1683 oath).

66. Benton reported a simple oath used in Germany as of 1878: "I swear by God almighty and all-knowing, to perform the duties of a lawyer conscientiously. So help me God."). BENTON, *supra* note 3, at 121.

67. In 1907, the ABA reported that German lawyers took the following oath:

> You shall promise and swear, that, . . . you will be faithful, obedient and subject to his highness and his high legal successor in the government; show obedience to the constitution; faithfully keep and observe the laws and ordinances especially, according to you best knowledge and understanding; faithfully and industriously aid everybody, the poor man quite as willingly as the rich man, without fear of the courts to his right, by advice, speech and action; not overcharge parties with fees; not obstruct the amicable settlement of law suits, but further it as much as possible; not retard or hinder justice in any way whatsoever; never give countenance to dishonest designs of parties, particularly not suggest to any party or any accused person groundless subterfuges and statements contrary to the truth, or recantation; and if you should find the cause of a party, in your persuasion to be without foundation, or not based upon the law, and you could not amicably dissuade such party, as is your duty to do, from its intent, not represent it in court in such cause any longer; and never, in any case taken in hand by you, speak and act more than you are instructed to do; keep secrets intrusted to you inviolate; take care of an return in good time public papers and records laid before you or communicated to you; keep safely, funds which may be intrusted to you, and give a conscientious account of them; and finally, show to the public authorities and courts, before which you will appear as counsel due respect, and abstain from all invective against the same; also not to be prevented from the fulfillment of these duties, either by favor, gifts, friendship or enmity, any other impure motive, and altogether so behave as is becoming and befitting a conscientious and duteous attorney and counselor at law.

was the oath developed in Switzerland. The Swiss trace their lawyer oaths to those of medieval France,[68] but the Swiss made significant contributions of their own. For example, a 1674 Swiss oath required not only litigation honesty elements but also participation in "social causes."[69] Importantly, in 1816, the Canton of Geneva imposed the following oath:

> I swear, before God, to be faithful to the Republic and the Canton of Geneva.
>
> To never act without the respect due to the Tribunal and the Authority.
>
> To not counsel or maintain any cause that I do not feel is just or equitable, as long as it does not refer to a criminal defense.
>
> To not knowingly use any means outside of the truth, in order to maintain the causes brought before me, and to never trick Judges by any means, nor by any false presentation of facts and laws.
>
> To absolve myself from any offensive personality, and to not advance any fact contrary to the honor and the reputation of the parties, unless it is a necessary for the advancement of our cause.
>
> To not encourage or commence any lawsuit because of any personal interest.
>
> To never refuse counsel based on personal considerations, causes of feeble, foreigners, or oppressed.
>
> May God punish me if I break these rules.[70]

The 1816 Swiss oath was detailed, embracing a relatively broad range of ethics concerns—allegiance, fair litigation, civility, and public service. Of particular significance was the oath's third clause, which stated the "just" causes duties of the French oaths. Under this clause, the lawyer had a duty to refrain from causes that he did not believe to be "just or equitable." This duty was in addition to the oath's litigation honesty duty (to not use "means outside of the truth"), but interestingly, the Swiss oath exempted criminal defense lawyers from the "just" causes duty. The Swiss oath had a substantial impact on legal ethics in the United States. As discussed in the next section, several states in the late nineteenth century adopted versions of the Swiss oath, and in the twentieth century, the ABA

---

31 REPORT OF THE THIRTY-FIRST ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION, at 735-36 (1907) [hereinafter *A.B.A. REPORTS*] (Report of the Committee on Professional Ethics, App. I).

68. Geneva Bar, CAHIERS DE L'ORDRE GENEVE, 7-11 (Feb. 1984) (written in French) (tracing history of Swiss lawyer regulations and oaths).

69. The oath provided:

> . . . to observe laws and customs of the village, not to mention a false fact, deny the true facts, to not undertake any cause that they do not deem supportable, to not refuse their counsel and assistance, maintain their true honor, to not maintain any cause they do not find supportable in their conscience, or go against any of their relatives or friends, in degree of regulation for civil actions and also to take part in social causes, but not give money to their clients to plead at the penalty of suspension.

Id at 8.

70. *Id.* (reprinting "Law on Judicial Organization," Title X, Article 146, February 15, 1816).

adopted a modified version of the Swiss oath as the ABA model oath.[71] Throughout this process, the "just" causes duty of the Swiss oath sparked debate as to the proper advocacy role of lawyers.

II. LAWYER OATHS IN THE UNITED STATES BEFORE THE TWENTIETH CENTURY

As in the preceding periods in Europe, the oath in colonial America was the most pervasive mode of lawyer regulation. Not surprisingly, the early colonies followed the English oath practice. The most common colonial model was the English attorney's "do no falsehood" oath, to which many colonies made minor modifications to reflect local regulation. A few colonies followed the example of the simple oath and, as states entered the union, they tended toward a simple model with an added vow of allegiance to the new state and nation.

In the early nineteenth century, the two English lawyer oaths—the "do no falsehood" oath and the simple oath—continued as the predominant forms of oath. This was an era of very little regulation of lawyers, but it was not an era in which lawyer oaths or legal ethics were forgotten. In the first half of the nineteenth century, regulation and debate of legal ethics were beginning to develop in the United States and the oath was a significant part of that development.

In the mid-nineteenth century, the Field Code brought the French oath tradition to the United States by codifying the detailed 1816 Swiss lawyer oath in the form of a statutory list of lawyers' duties. The Field Code duties were greater in number and substantive breadth than previous American oaths and regulation. The Field Code included duties of public service and confidentiality, required lawyers to maintain only "just and equitable" causes, and set a different standard of conduct for criminal defense lawyers. Many states followed the example of the Field Code with local modifications as to both form and substance. By putting the Swiss oath's statement of legal ethics duties squarely before legislators and lawyers, the Field Code acted as a catalyst for further debate and refinement of the American understanding of the proper duties of lawyers.

A. LAWYER OATHS IN COLONIAL AND REVOLUTIONARY AMERICA

Colonial America regulated lawyers sporadically.[72] Some colonies burdened lawyers with strict regulation, and others almost ignored lawyers by employing essentially no regulation. Despite this disparity, lawyer oaths, particularly the English "do no falsehood" oath, were a relative constant in the American colonies, and the oaths helped legitimize the early colonial profession. Charles

71. *See infra* Part II(C) (discussing Field Code) and Part III (discussing ABA model oath).

72. *See* Andrews, *supra* note 2, at 1414 (discussing forms and content of colonial regulation of lawyers).

Warren credits Massachusetts' early adoption of the English "do no falsehood" oath for rendering law "a regular profession."[73] Likewise, Professor Douglass, in his study of lawyers in colonial Maryland, attributes the seventeenth century lawyer's oath as transforming pleaders into a profession of lawyers.[74]

The content and function of the lawyer's oath varied, often depending on the other regulation in the colony. Massachusetts and Virginia are good examples. Lawyers in early Massachusetts[75] faced rather welcoming regulation compared to that of colonial Virginia.[76] In both colonies, however, lawyers took versions of the "do no falsehood" oath until the oath was simplified as the colonies became states.

Massachusetts lawyers likely used the English "do no falsehood" oath from the beginning of legal practice in the colony.[77] In 1701, a Massachusetts act formally mandated the oath, in substantially the same form as the traditional English "do no falsehood" oath, except that the Massachusetts oath omitted the reference to fees.[78] This modification of the oath was relatively common because most early colonies otherwise regulated the fees of lawyers.[79]

In 1785, the Massachusetts legislature adopted a new "do no falsehood" oath with updated language but the same substantive content as the older oath.[80] This

---

73. CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 77-78 (William S. Hein & Co., Inc. 1990) (1967).

74. John E. Douglass, *Between Pettifoggers and Professionals: Pleaders and Practitioners and the Beginnings of the Legal Profession in Colonial Maryland 1634-1731*, 39 AMER. J. LEGAL HIST. 359, 366 (1995) (arguing that the oath "was an important factor in effecting the transformation of pleaders to practitioners," that "persons without some knowledge of the law could now be excluded from pleading cases," that attorneys who took the oath became by virtue of that fact creatures of the courts," and that use of oaths, instead of letters of attorneys, "moved colonial Maryland's litigation onto a more professional footing").

75. For a general discussion of lawyers in early Massachusetts, see HOLLIS R. BAILEY, ATTORNEYS AND THEIR ADMISSION TO THE BAR IN MASSACHUSETTS (1907).

76. *See* 1 CHROUST, *supra* note 37, at (attributing early colonial Virginia hostility to lawyers to the "jealousy of the Virginia planters and merchants").

77. *See* BENTON, *supra* note 3, at 58-59 ("do no falsehood" oath adopted "certainly as early as July 27, 1686").

78. Section 2 of the 1701 Act required the following oath:

> You shall do no falsehood, nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the Justices of the Court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice, but you shall use yourself in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the courts as to your clients. So help you God.

Id. at 60.

79. The 1701 Massachusetts act, for example, separately set maximum fees for lawyers. *See* BENTON, *supra* note 3, at 60-61. *See generally* Andrews, *supra* note 2, Part II(A)(3) (discussing colonial fee regulation); John Leubsdorf, *Toward a History of the American Rule on Attorney Fee Recovery*, 47 LAW & CONTEMP. PROBS. 9, 9-17 (1984) (same).

80. The 1785 oath stated:

> You solemnly swear that you will do no falsehood nor consent to the doing of any in court; and if you know of an intention to commit any you will give knowledge thereof to the justices of the court or some of them that it may be prevented; you will not wittingly or willingly promote or sue any false,

oath continued until 1836, when the Massachusetts legislature mandated a simple oath: "You solemnly swear, that you will conduct yourself, in the office of an attorney, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts as to your clients."[81] Massachusetts apparently used the simple oath until 1860, when it reinstituted a modified, shortened version of the "do no falsehood" oath,[82] which Massachusetts continues to use today.[83]

By contrast, the Virginia legislature in the seventeenth and early eighteenth centuries vacillated on an almost yearly basis between strictly regulating lawyers and barring them altogether.[84] In the mid-eighteenth century, Virginia permanently allowed lawyers and thereafter imposed substantive standards, primarily through varying oaths. In 1732, "An Act to prevent frivolous and vexatious suits" required lawyers to take the English "do no falsehood" oath and provided for suspension or disbarment of any attorney in Virginia who violated the oath.[85] Ten years later, Virginia repealed the 1732 Act and prescribed merely an oath against "exorbitant fees."[86] In 1748, due to "the great number of ignorant and unskillful attornies," Virginia revived the 1732 Act but shortened the oath.[87] Over the next several decades, Virginia passed a succession of statutes that modified the form of oath.[88] In 1792, Virginia set a short form of oath that required lawyers to swear to

---

> groundless or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion and with all good fidelity as well to the courts as your clients. So help you God.

Id. at 61-62; Bailey, *supra* note 75, at 32.

81. Bailey reported that the legislature in 1836 changed "the entire system," which included a simplified oath of office for an attorney. Bailey, *supra* note 75, at 56-57. The 1836 act also provided for a lawyer's removal "for deceit, malpractice or other gross misconduct." *Id.* at 63-64.

82. The 1860 oath was similar to the 1785 form, but the 1860 oath omitted the duty to report false statements *Id.* at 63.

83. *See* MASS. GEN. LAWS ANN. ch. 221, § 38 (West 2005).

84. In 1642, "An Act for the Better Regulating of Attorneys and the great fees exacted by Them," forbade persons who did not have a special license to plead cases on behalf of another and limited fees to a maximum of twenty pounds of tobacco in county court. Cf. , BENTON, *supra* note 3, at 102-103; 1 CHROUST, *supra* note 37, at 268-69, n.134. Just a few years later, in 1645, Virginia repealed the earlier licensing act and outlawed all "mercenary" attorneys who sought "their own profit and inordinate lucre." BENTON, *supra* note 3, at 103; 1 CHROUST, *supra* note 37, at 269 n.135.

85. BENTON *supra* note 3, at 108; 1 CHROUST, *supra* note 37, at 273-74.

86. The 1745 oath provided "that I will truly and honestly demean myself in the practice of attorney, according to the best of my knowledge and ability." BENTON, *supra* note 3, at 109.

87. *Id.* 1 CHROUST, *supra* note 37, at 275-76 n.166-74.

88. For example, a 1748 Virginia statute adopted the "do no falsehood" oath. Moliterno, *supra* note 44, at 786, n.42. In 1777, the oath swore "that I will be faithful and true to the Commonwealth of Virginia, and that I will well and truly demean myself in the office of attorney at law." 2 CHROUST, *supra* note 37, at 261 n.172. In 1785, Virginia modified the "do no falsehood" oath:

> You solemnly swear, that you will do no falsehood nor consent to the doing of any in Court, and if you know of an intention to commit any [you shall prevent it]; You will not wittingly or willingly promote or sue any false, groundless, or unlawful suit . . . ; you will delay no man for lucre or malice; but will

"honestly demean" themselves and to act to the best of their abilities,[89] which oath Virginia continues to use today.[90]

The move to a shorter oath was a trend of sorts. As early as 1714, Maryland used a simple form of oath, combining a vow of allegiance with a pledge of fair and honorable behavior.[91] As discussed in the previous section, the English Parliament adopted a simple attorney's oath in 1729,[92] and as with other statutory matters, the Georgia colony expressly incorporated that English practice as its own.[93] After the revolution, five new states—New Jersey,[94] New York,[95] North Carolina,[96] Rhode Island,[97] and South Carolina[98]—adopted a simple oath as part of their new judicial systems.

The simple lawyer oaths typically included both a pledge of good conduct and a vow to support the laws and constitution of the state and federal governments.

---

conduct yourself . . . according to the best of your knowledge and discretion, and with all good fidelity.

Molitemo, *supra* note 44, at 786 n.42. The following year, the oath was shortened again: "I will honestly demean myself in the practice of a counsel, attorney, or proctor, and will execute my office according to the best of my knowledge and ability." 2 CHROUST, *supra* note 37 at 261 n.172 (1786 Act).

89. In 1792, a new act required lawyers to swear only that "I will honestly demean myself in the practice of law . . . , and will in all respects execute my office, according to the best of my abilities." 2 CHROUST, *supra* note 37, at 263.

90. In 1909, Benton reported that the Virginia statute required the attorney to "take an oath that he will honestly demean himself in the practice of the law, and to the best of his ability execute his office of attorney-at-law; and also, when he is licensed in this state, take the oath of fidelity to the commonwealth." *See* BENTON, *supra* note 3, at 110. Today, Virginia requires a lawyer to take "an oath of fidelity to the Commonwealth, stating that he will honestly demean himself in the practice of law and execute his office of attorney-at-law to the best of his ability." VA. CODE ANN. § 54.1-3903 (2008).

91. *See* BENTON, *supra* note 3, at 52; WARREN, *supra* note 73, at 53. Maryland used some form of lawyer's oath as early as the mid-seventeenth century. *See* Douglass, *supra* note 74, at 366.

92. *See supra* notes 50-54 (discussing 1729 act).

93. See WILLIAM SCHLEY, DIGEST OF THE ENGLISH STATUTES OF FORCE IN THE STATE OF GEORGIA 353-54 (J. Maxwell, Printer)(1826).

94. *See infra* note 101.

95. New York, after using different oaths, likely including the "do no falsehood" oath, adopted a short oath in 1787: "I will truly and honestly demean myself in the practice of an attorney . . . according to the best of my knowledge and ability." BENTON, *supra* note 3, at 79-84. *See generally* Robert A. Emery, *I Do Solemnly Swear: The Evolution of the Attorney's Oath in New York State*, 77 Jan. N.Y. ST. B.J. 48 (Jan. 2005) (reviewing evolution of the lawyer's New York, " from specific to generic, and from complexity to perhaps vacuous simplicity").

96. In 1777, a North Carolina Act established a short oath. BENTON, *supra* note 3, at 88-89; 2 CHROUST, *supra* note 37, at 166 n.193.

97. Under a 1705 Act, Rhode Island used a unique oath: "not to plead for favor nor affection for any person, by the merit of the case according to law." BENTON, *supra* note 3, at 94-95. In 1837, the Rhode Island Supreme Court adopted a more common short oath: "that I will demean myself as an Attorney . . . uprightly and according to law, and that I will support the constitution and laws of this State, and the Constitution of the United States." BENTON, *supra* note 3, at 96. At some later date, Rhode Island adopted the traditional "do no falsehood" oath. *See infra* note 283 (current oath).

98. South Carolina may have used either form: its 1785 legislation required that lawyers take an "oath of allegiance and fidelity to this State, and likewise the oath of an attorney." BENTON, *supra* note 3, at 99, 101; 2 CHROUST, *supra* note 37, at 268 n.201.

For example, in 1799, New Jersey's first legislature passed a comprehensive "Act to Regulate the Practice of the Courts of Law,"[99] under which the New Jersey Supreme Court issued a rule requiring attorneys to take both an oath of allegiance to the state[100] and the following general oath of office:

> I, _____, do solemnly promise and swear, that I will faithfully and honestly demean myself in the practise of an attorney (or of a counselor or solicitor, as the case may be) and will execute my office according to the best of my abilities and understanding. So help me God.[101]

Likewise, in 1790, the newly established United States Supreme Court required a lawyer admitted to practice before it to swear to support the constitution of the United States and to "demean myself as an attorney (or counsellor) of the court, agreeably and according to law."[102]

Not all early states followed this trend toward simplification. Connecticut,[103] New Hampshire,[104] and Vermont[105] continued to use the longer form of the traditional English "do no falsehood" oath, and all three use that form of oath today. Delaware[106] and Pennsylvania[107] adopted a modified, shortened form of the "do no falsehood" oath. This modification added a vow of allegiance and

---

99. The act also required licensing and civil damages against attorneys, provided for removal of licenses of attorneys who were guilty of 'malpractice,' and a fine for excessive fees. 2 CHROUST, *supra* note 37, at 252-53; BENTON, *supra* note 3, at 74-75.

100. The allegiance element of the 1799 New Jersey oath was as follows: "I do and will bear true faith and allegiance to the government established in this state, under the authority of the people. So help me God." BENTON, *supra* note 3, at 75.

101. *Id.*; 2 CHROUST, *supra* note 37, at 254 n.132.

102. Appointment of Justices, 2 U.S. 399, 399-400 (1790).

103. Connecticut adopted an oath in a May 1708 Act "for the better regulating proceedings and pleas at the bar . . ." BENTON, *supra* note 3, at 42. In a 1875 act, Connecticut imposed the following "do no falsehood" oath:

> You solemnly swear that you will do no falsehood, nor consent to any to be done in court, and if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed; you will not wittingly or willingly promote, sue, or cause to be sued, any false or unlawful suit, or give aid, or consent, to the same; you will delay no man for lucre or malice; but will exercise the office of attorney, within the court wherein you may practice, according to the best of your learning and discretion, and with fidelity, as well to the court as to your client; so help you God.

CONN. GEN. STAT. § 2- (1875). Connecticut uses substantially the same oath today. *See infra* note 278 (current oath).

104. As once part of the Massachusetts colony, New Hampshire used the "do no falsehood" oath in the seventeenth century. *See* BENTON, *supra* note 3, at 69-70. In 1791, after New Hampshire became a state, it adopted the "do no falsehood" oath and reportedly used a similar oath in 1909. BENTON, *supra* note 3, at 71-73. New Hampshire uses this oath today. N.H. REV. STAT. ANN. § 311:6 (LexisNexis 2008).

105. In 1787, Vermont enacted its first law regulating lawyers, setting admission standards and mandating a "do no falsehood" oath. BENTON, *supra* note 3, at 111-113. This oath continued in Vermont, through 1909, *id.* and it is in use today. VT. RULE ADMISSION § 12.

106. Delaware first adopted the "do no falsehood" oath in 1704. *See generally* BENTON, *supra* note 3, at 44-45; 2 CHROUST, *supra* note 37, at 255. In 1721, Delaware adopted a shortened "do no falsehood" oath: "Thou shalt behave thyself in the Office of an Attorney within the court according to the best of thy learning and ability, and with all good fidelity as well to the court as to the client: Thou shalt use no falsehood, nor delay any person's

deleted the older oath's statements regarding fees and reporting falsehoods.[108] Both states continue to use this oath today.[109]

B. LAWYER OATHS IN THE UNITED STATES IN THE FIRST HALF OF THE NINETEENTH CENTURY

As new states joined the union in the early and middle nineteenth centuries, they followed the lead of the original states and adopted either the "do no falsehood" or the simple oath. The era is seen by modern observers as one in which American lawyers had relatively little guidance as to proper conduct—perhaps a "dark ages" of legal ethics.[110] Modern scholarly reviews of the era usually acknowledge the oath but dismiss its importance in guiding lawyer conduct. Professor Wolfram, for example, argues that, after the revolution, courts would "occasionally refer to the oath required of lawyers on admission to the bar, but those oaths were invariably quite general in form and could hardly have provided either guidance to a questioning lawyer or restraint on a court inclined otherwise to impose discipline."[111] Professors Zacharias and Green assert that the oath in the nineteenth century was not a "source of the lawyer's distinctive obligations."[112] They acknowledge that the oath represented an agreement by the lawyer "to comply with his public obligations, whatever they may be," but maintain that "the oath itself [did] not enumerate the lawyer's obligations."[113] Instead, the lawyer was "supposed to learn or identify his obligations" from "socialization, professional lore, independent reflection on the expectations of the lawyer's professional 'office.'"[114]

There is truth in these observations. Lawyers were largely unregulated,

---

cause through lucre or malice." BENTON *supra* note 3, at 45. Delaware uses this form of oath today. Del. Rules, Rule 54.

107. Pennsylvania reportedly used the traditional "do no falsehood" oath in the early eighteenth century, and by at least 1833, Pennsylvania had shortened the oath:

> You do swear . . . that you will support the constitution of the United States and the constitution of this Commonwealth, and that you will behave yourself in the office of attorney within this court, according to the best of your learning and ability, and with all good fidelity, as well to the court as to the client, that you will use no falsehood, nor delay any person's cause for lucre or malice.

1833 Pa. Laws 354; *see also* 1 CHROUST, *supra* note 37, at 222 n.295; WARREN, *supra* note 73, at 78. Pennsylvania uses this oath today. 42 PA. CONS. STAT. § 2522 (2008).

108. *See supra* notes 5 & 106.

109. *Id.*

110. William B. Moore, *Dark Ages or Enlightenment? A Survey of Legal Ethics In Theory and Practice in the United Sates Between the Years 1825 and 1905* (1975) (student paper on file at Harvard Law School library)(analyzing whether the nineteenth century was a "nadir" or "dark ages" of legal ethics).

111. Charles Wolfram, *Toward a History of the Legalization of American Legal Ethics—I. Origins*, 8 U. CHI. L. SCH. ROUNDTABLE 469, 479 (2001).

112. Fred C. Zacharias & Bruce A. Green, *Reconceptualizing Advocacy Ethics*, 74 GEO. WASH. L. REV. 1, 32-36 (2005).

113. *Id.* at 34.

114. *Id.* at 35.

especially when compared to the modern legal profession. Unquestionably, the nineteenth century lawyer oath lacked the detail of today's standards for lawyer behavior, and lawyers in the early nineteenth century learned much of their ethics from socialization, lore and reflection.[115] This does not mean that the lawyer's oath did not serve any regulatory or ethical function. To the contrary, the oath played a fairly significant role in guiding legal ethics throughout the nineteenth century. In some applications, the oath directly dictated lawyer conduct, and in others, the oath, as part of the professional lore of the era, indirectly guided lawyers.

The mere requirement of the oath conveyed a sense of obligation to lawyers. Oaths were serious rituals in this era. Oaths were important enough that the first act of the new Congress of the United States in 1789 was to pass a bill regarding the oath for office-holders.[116] As Professor Horwitz explains, oaths had a gravity that is not fully appreciable today, but was well understood by the founding generation, because oaths both appealed to God and implicated the oath-taker's personal sense of honor.[117]

The oath reflected the role of the lawyer as an officer of the court. Although there was some debate in the nineteenth century as to whether lawyers were governmental "office holders," all seemingly agreed that lawyers were officers of the court.[118] George Sharswood, the prominent nineteenth century jurist, academic and legal ethicist—best known for his influential 1854 *Essay on Professional Ethics*[119]—explained the role of the oath in conferring this office to lawyers:

> It is an oath of office, and the practitioner, the incumbent of an office—an office in the administration of justice—held by authority from those who represent in her tribunals the majesty of the commonwealth, a majesty truly more august than that of kings or emperors. It is an office, too, clothed with many privileges

---

115. *See* Andrews, *supra* note 2, at 1423, 1426, 1431.

116. I Public Statutes at Large, Statute I, Ch. 1 ("An Act to regulate the Time and Manner of administering certain Oaths") (1789).

117. Paul Horwitz, *Religious Tests in the Mirror: The Constitutional Law and Constitutional Etiquette of Religion in Judicial Nominations*, 15 WM. & MARY BILL RTS. J. 75,106-08 (2006) (explaining that the "root" of the importance of oaths "lay in two aspects of the oath." "First, to swear an oath was a deeply significant act for religious reasons" and "Second, the religious aspects of the oath . . . were buttressed by the founding generations' keenly felt sense of honor.").

118. *See* Ex Parte Garland, 71 U.S. 333, 378 (1866) (stating that attorneys "are not officers of the United States" but instead "officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character"); Benjamin Watkins Leigh's Case, 15 (1 Munf.) 468 (Va. 1810) (holding that lawyers must take the lawyer's oath but need did not take Virginia's anti-dueling oath applicable to "every person who shall be appointed to any office or place, civil or military, under this commonwealth").

119. HON. GEORGE SHARSWOOD L.L.D., AN ESSAY ON PROFESSIONAL ETHICS § Memorial (T. & J. W. Johnson & Co., Law Booksellers and Publishers 5th ed. 1884). Sharswood was a professor and dean at the University of Pennsylvania law school, served on the Pennsylvania Supreme Court, and was its chief justice from 1879 to 1883. *See id.* ("Memorial," discussing Sharswood's life and achievements).

> —privileges, some of which are conceded to no other class or profession. It is therefore that the legislature have seen fit to require that there should be added to the solemnity of the responsibility, which every man virtually incurs when he enters upon the practice of his profession, the higher and more impressive sanction of an appeal to the Searcher of all Hearts.[120]

In 1867, Bethune Duffield spoke to the University of Michigan law class in praise of the oath as a special means to secure the "moral fitness" and "allegiance to the State" of the holder of this "high service."[121] Professor Hoeflich, in his study of nineteenth century ethical debate, reports that the oath was a recurring theme in ethical discourse and that the "lawyer's oath elevated the lawyer from being a private citizen to being a public official, and, as such, gave the lawyer a whole new set of obligations."[122]

The oath also was a basis for lawyer discipline in the early nineteenth century. As Professor Wolfram notes, there is a dearth of early American case law addressing or imposing lawyer regulation.[123] Professors Zacharias and Green have studied the opinions of John B. Gibson, Chief Justice of the Pennsylvania Supreme Court, as examples of early judicial regulation of lawyers.[124] At least two of Justice Gibson's cases show that the oath was a basis for disciplining lawyers.

In the 1835 case of *In re Austin*, Justice Gibson explained that courts had a broad range of disciplinary options with respect to lawyers appearing before them, including "expulsion from the bar," reprimand, and fines.[125] He urged caution in assessing the extreme punishment of expulsion,[126] but stated that expulsion was the appropriate penalty for a lawyer's violation of his or her oath:

> It is not doubted that any breach of the official oath is a valid cause, for proceeding for the former [expulsion]; for the man who deliberately violates the sanctions of a lawful oath, proves himself to be unworthy of further confidence; society has no other hold upon him. The most insignificant breach of the fidelity enjoined may, therefore, be visited with this measure.[127]

---

120. *Id.* at 58-61 (citations omitted).

121. D. Bethune Duffield, The Lawyer's Oath: An Address Delivered Before the Class of 1867, of the Law Department of the University of Michigan 5 (Mar. 27, 1867).

122. M.H. Hoeflich, *Legal Ethics in the Nineteenth Century: The "Other" Tradition*, 47 KAN. L. REV. 793, 798 (1999) (oaths "were taken quite seriously" because "[t]hey bound the taker before God and man").

123. *See* MOORE, *supra* note 110.

124. *See generally* Zacharias & Green, *supra* note 112.

125. *In re* Austin, 1835 WL 2736, *12 (Pa. 1835).

126. "[T]he end to be attained by removal, is not punishment, but protection. As punishment, it would be unreasonably severe, for those cases in which the end is reclamation and not destruction, and for which reprimand, suspension, fine, or imprisonment seem to be the more adequate instruments of correction; for expulsion from the bar blasts all prospects of prosperity to come, and mars the fruit expected from the training of a lifetime." *Id.*

127. *Id.*

Austin concerned the question of whether a series of letters by lawyers, published in the press and critical of a judge, were a violation of the lawyers' ethical duties.[128] Justice Gibson concluded that the lawyers did not violate their duties,[129] and he did not decide the question in the abstract. He looked in part to the terms of the oath itself: as "fidelity is exacted by the terms of the oath . . . 'in the office of attorney,' and 'within the court,' the act which may violate it, must be done in the face of the court."[130]

Ten years later, in *Rush v. Cavenaugh*,[131] Justice Gibson discussed the ethical duties of a lawyer in response to a demand by a client to prosecute a man that the lawyer believed to be innocent.[132] Attorney Rush had been retained to bring a private prosecution for forgery, but he withdrew it, over his client's objection, after Rush became "convinced" that "the accusation was false."[133] Rush expected to be paid for his work, and, in response, his client called Rush a "cheat."[134] The *Rush* case was a slander action brought by Rush against his former client.[135] Justice Gibson characterized the "material question" as whether the lawyer "violate[d] his professional duty to his client."[136] He held that lawyer Rush acted properly in withdrawing from the prosecution. Justice Gibson relied in part on the oath, stating that a lawyer "is expressly bound by his official oath to behave himself in his office of attorney with all due fidelity to the court as well as to the client; and he violates it when he consciously presses for an unjust judgment: much more so when he presses for the conviction of an innocent man."[137]

The more difficult question is the extent to which the oath itself set or guided ethical standards. The answer depends upon both the oath taken by the lawyer and the conduct at issue. Lawyers who took the simple oath got very little ethical guidance from that oath. Even the "do no falsehood" oath did not give much guidance outside of litigation. A few states retained the longer traditional form of the "do no falsehood" oath, which stated generally applicable duties of fees and basic competence,[138] but the oath's primary focus was litigation.

Yet, the "do no falsehood" oath gave reasonable direction to lawyers as to litigation conduct. Both versions of the "do no falsehood" oath stated that the lawyer had duties to the court as well as to the client. In the shortened version of the "do no falsehood" oath, the lawyer swore that he would behave "with all good

---

128. *Id.*

129. *Id.*

130. *Id.* "The oath undoubtedly looks to nothing like allegiance to the person of the judge, unless in those cases where his person is so inseparable from his office, that an insult to the one, is an indignity to the other." *Id.* at 15.

131. 2 Pa. 187, 1845 WL 5210 (Pa.).

132. *See generally* Zacharias & Green, *supra* note 112 (analyzing *Rush*); 1845 WL5210, *2.

133. Rush v. Kavanaugh, 2 Pa. 187 (Pa. 1845).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *See supra* notes 102-104.

fidelity, as well to the court as to the client, that [he would] use no falsehood, nor delay any person's cause for lucre or malice."[139] The longer traditional version of the oath also stated that the lawyer must not bring "false or groundless" suits and that the lawyer must inform the court of falsehoods made to the court.[140] These statements of litigation duties were broad enough to directly guide lawyers as to many ethical dilemmas in litigation. For example, in *Rush*, once lawyer Rush concluded that his client's "accusation was false," a fair reading of his own oath— Pennsylvania's modified "do no falsehood" oath—would have instructed Rush that he owed a duty to the court not to press the false claim.[141] Moreover, the historical prominence of the longer "do no falsehood" oath suggests that this oath gave litigation guidance to all American lawyers, even those who took a simple oath or the shortened "do no falsehood" oath. Put another way, the litigation honesty elements of the "do no falsehood" oath likely were dominant components of the professional lore of American lawyers in the early nineteenth century.

The "do no falsehood" oath, even in its longer form, did not address all ethical issues in litigation. It did not address what would become a focal point of legal ethics debate in the nineteenth and early twentieth centuries: cases where the claim or defense had legal and factual merit, but where the lawyer did not believe the cause to be otherwise "just." The "do no falsehood" oath did not address this case, but it was part of the older oaths of Europe—the Justinian oath, some ecclesiastical oaths and the French oaths.[142] These other oaths instructed lawyers to maintain only "just" causes (or to refrain from "unjust" causes). In some early forms, the duty might have been a substitute or shorthand statement of general litigation fairness,[143] but in many older oaths, the "just" causes duty was independent of the litigation honesty duties.[144]

The question is the practical impact that these other oaths had on early nineteenth century lawyers. To some extent, the "just" causes concept was part of the professional lore of some early American lawyers. Justice Story, for example,

---

139. *See supra* note 107 (Pennsylvania oath).

140. Three early states—Connecticut, New Hampshire and Vermont—used the longer, traditional "do no falsehood" oath throughout the nineteenth century. *See supra* notes 103-105. In addition, a few new states adopted the longer oath later in the century. *See infra* note 169.

141. *But see* Zacharias & Green, *supra* note 112, at 32 (stating that Rush "was accountable to that standard (i.e., a duty to refrain from pursuing unjust prosecutions), though it had not been explicitly spelled out in the lawyer's oath or in prior state court opinions, because Gibson evidently believed that lawyers would know of it independently").

142. See *supra* notes 45 & 46.

143. The Justinian Oath instructed lawyers to "carry out for their clients what they consider to be true and just, doing everything which is possible for them to do." *See supra* note 20. In the 1221 oath of Frederic II, lawyers swore that they would not "allege any thing against their sound conscience." *See supra* note 30.

144. The 1231 oath the Council of Roeun instructed lawyers to swear both that they would "not support cases that are unjust or militate against his conscience" and that they would not use false pleas or other falsehoods. *See supra* note 56. The 1344 French ordinance required lawyers to swear that they would not "take charges of any causes which they know to be unjust" and that they would "abstain from false citations." *See supra* note 61.

in his 1832 treatise on agency law, quoted the "well worthy" ancient oaths,[145] and derived two essential maxims of lawyers—"one, never to defend a cause, which is unjust; and the other, not to defend just causes but by the ways of justice and truth."[146] Nevertheless, the "just" causes duty, as an independent duty, was not as deeply embedded in the lore of American lawyers as the honesty elements of the "do no falsehood" oath.[147] Unlike the litigation honesty standard, which was stated in many oaths of the era, the "just" causes duty had not been stated in Anglo-American oaths for generations.[148]

The difference in prominence between the honesty standard and the "just" causes standard offers an important perspective on nineteenth century legal ethics. It arguably describes one of the key points of disagreement of the era—the proper limits of litigation advocacy. Many modern scholars attribute to the era two opposing views of the proper advocacy role of lawyers—a client-oriented view and a lawyer morality view.[149] The leading nineteenth century statement of the client-oriented view was that of English Lord Brougham in his 1820 defense of Queen Caroline, in which he urged that the lawyer knew but one person, his client, and that he must use all means expedient in his defense of the client.[150] The leading example of the lawyer morality view was the 1836 work of American legal educator David Hoffman—*Fifty Resolutions In Regard to Deportment*[151]—wherein Hoffman instructed young lawyers to resolve that "[m]y client's conscience, and my own, are distinct entities"[152] and that a lawyer must decline cases or refuse to present defenses that the lawyer believed to be unjust.[153] Professors Zacharias and Green claim that Justice Gibson, in the *Rush* and *Austin* cases, reflected a "middle ground" to these two views of advocacy—one of "professional conscience," in which the lawyer owed duties to the court that

145. Story, *supra* note 20, § 24, at 26.

146. *Id.*

147. *See supra* note 47 (noting early English ecclesiastical oath's suggestion of a "just" causes duty but absence of the duty in later lay oaths).

148. S*ee supra* note 54 (noting that English oaths likely did not state a "just" causes duty after the fourteenth century).

149. *See* Zacharias and Green, *supra* note 112 (collecting commentary); *see also* Andrews, *supra* note 2, at 1429-31 (discussing debate and perspectives on advocacy).

150. *See* Monroe H. Freedman, *Henry Lord Broughman and Zeal*, 34 HOFSTRA L. REV. 1319, 1322 (2006) (quoting Brougham's statement at 1820 trial). Professor Freedman is an outspoken proponent of zealous advocacy, and he argues that Lord Brougham's view of zealous advocacy remains the dominant theory of modern lawyering. *Id.* at 1324.

151. Hoffman was a law professor at the University of Maryland, who published a plan for legal education, and to the second edition of his work, he appended his ethical resolutions, for which he is now best known. David Hoffman, COURSE OF LEGAL STUDY, 752-75 (2d ed. 1836) ("Fifty Resolutions In Regard to Deportment").

152. *Id.* at 755 (Resolution 14).

153. *Id.* at 754. Among other things, Hoffman admonished lawyers to not present technical defenses such as the statute of limitation or infancy, if his client actually owed the debt: "I shall claim to be the sole judge (the pleas not being compulsory) of the occasions proper for their use." *Id.* at 755 (Resolution 12, statute of limitations, and Resolution 13, infancy).

overrode client wishes, dictated by professional standards, not the lawyer's own sense of morality.[154] George Sharswood, in his seminal 1854 essay, took an approach similar to that of Justice Gibson.[155]

These differing views can be recast as debate as to the validity and meaning of a lawyer's duty to assess the justness of his client's cause. Lord Brougham's statements can be seen as rejecting the duty altogether, at least in criminal cases.[156] David Hoffman's resolutions can be seen as a broad reading of the "just" cause duty in which the lawyer's own morality determined what was "just." Gibson and Sharswood can be characterized as taking a middle approach under which lawyers principally adhered to the litigation honesty elements of the "do no falsehood" oath but also engaged in modest assessment of the justness of their client's cause.

The perspective of the oath offers similar insights as to the debate about the proper advocacy role of criminal defense lawyers. This was the area in which the legal ethics debate was most profound, and it also was an area in which the oaths lacked guidance. Criminal defense had never been the focus of litigation oaths, particularly in England.[157] In the early nineteenth century, American lawyers and courts were beginning to define the unique American constitutional right to counsel in criminal cases, both federal[158] and state.[159] Lawyers and ethicists for good reason pondered the interrelationship of these "new" constitutional rights and their traditional advocacy duties, as reflected by oaths and other professional lore that did not speak directly to the issue.[160]

---

154. Zacharias & Green, *supra* note 112, at 4-5 (stating that modern notions of proper advocacy do not find their origins in Brougham or Hoffman but instead are "primarily indebted" to Gibson).

155. Justice Gibson was Sharswood's predecessor on the Pennsylvania Supreme Court, and Sharswood shared many of Gibson's views. For example, in discussing a lawyer's obligations to a judge under the "do no falsehood" oath, Sharswood states a proposition drawn from *Austin*:

> Fidelity to the court requires outward respect in words and actions. The oath, as it has been said, undoubtedly looks to nothing like allegiance to the person of the judge; unless in those cases where his person is so inseparable from his office, that an insult to the one is an indignity to the other.

Sharswood, *supra* note 119, at 61-62 (citing *Austin*). *See supra* note 130 (discussing this aspect of *Austin*).

156. The views attributed to Lord Brougham also might be seen as rejecting (at least in criminal cases) the duties stated in the longer "do no falsehood" oath to abandon clients who insist on falsehoods and to report falsehoods to the court. Whether a criminal defense lawyer has a duty to inform the court of a client's falsities is an issue that has prompted considerable modern debate. *See* Monroe Freedman, *Getting Honest About Client Perjury*, 21 GEO. J. LEGAL ETHICS 133 (2008). *See also supra* note 150 (discussing Freedman and Lord Brougham).

157. *See supra* notes 48-49.

158. US. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense").

159. Most states have constitutional provisions governing right to counsel, often different from the federal version. *See* Joseph Colquitt, *Hybrid Representation: Standing the Two-Side Coin on its Edge*, 38 WAKE FOREST L. REV. 55, 81 (2003) (surveying state constitutional provisions).

160. For example, Sharswood, after citing Lord Brougham's and others' views, noted the difficulty of particularizing a lawyer's ethical duty in a criminal case, and, given the constitutional rights of the accused, he made a "distinction" between prosecution and defense of criminal charges and between criminal and civil cases. Civil counsel, according to Sharswood, was "duty bound" to refuse a plaintiff whose demand offends the lawyer's "sense of what is just and right." Sharswood, *supra* note 119, at 90, 96. A civil defense lawyer could

This is not to say that the oaths—either those oaths with the "just" causes duty or those without it—actually prompted the debate. Instead, the oaths' differences provide a broader historical perspective from which to assess the early nineteenth century ethical discourse. In other words, the gap between the litigation honesty duty of the "do no falsehood" oath (a vow sworn by many early nineteenth century lawyers) and the "just" causes duty of other oaths (a duty that the lawyers perhaps knew but did not swear to abide) might help explain the degree of disagreement as to proper litigation advocacy.

In the second half of the nineteenth century, the oath took on a new role in this debate. The Field Code codified the 1816 Swiss oath, and it became the catalyst for debate. The Swiss oath both stated a "just" causes duty and exempted criminal defense lawyers from this duty.[161] The Field Code brought these ethical statements to America, not as professional lore, but as a formal codification of a lawyer's duties.

C. LAWYER OATHS IN THE FIELD CODE ERA OF THE LATE NINETEENTH CENTURY

In 1848, David Dudley Field drafted a proposed code of civil procedure for New York, and his "Field Code" became a popular model for codes in the growing nation.[162] Section 511 of the Field Code codified the 1816 Swiss oath in the form of eight statutory duties of a lawyer:

> 1. To support the constitution and laws of the United States, and of this state[;]
> 2. To maintain the respect due to the courts of justice and judicial officers[;]
> 3. To counsel or maintain such actions, proceedings, or defen[s]es, only[,] as appear to him legal and just, except the defen[s]e of a person charged with a public offence[;]
> 4. To employ[,] for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law[;]
> 5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets, of his client[;]
> 6. To abstain from all offensive personality, and to advance no fact prejudicial

---

insist that the case be tried upon its merits, but he could not defend against "an honest and just claim, by insisting upon the slips of the opposing party, by sharp practice, or special pleading." *Id.* at 99.

161. *See supra* note 69 (1816 Swiss oath).

162. The "Field Code" is difficult to identify as a single document. Although the Field Code is most noted for modernization of civil procedure, Field drafted codes for other areas of the law. The code underwent revisions by both Field's commission and the New York legislature. Some authorities cite to the original code proposed by Field in 1848 as the "Field Code," while others refer to the slightly modified version, published in 1850. I use the 1850 version. The Code of Civil Procedure of the State of New York: 1850 (Vol. 1) (The LawBook Exchange Limited) [hereinafter Field Code].

> to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged[;]
>
> 7. Not to encourage either the commencement or the continuance of an action or proceeding, from any motive of passion or interest[;]
>
> 8. Never to reject, for any consideration[s] personal to [my]self, the cause of the defen[s]eless or the oppressed.[163]

According to Field, the 1816 Swiss oath "so justly [expressed] the general duties of lawyers, that we cannot do better than take almost the very terms of it."[164] Rather than binding lawyers by oath, the Field Code bound lawyers by statute. The Field Code provided for professional discipline for a willful violation of the duties,[165] but it did not contain any form of oath.[166] Some states added a simple oath promising to abide by the duties in Section 511,[167] and Washington, perhaps along with other states, converted the list of duties back into oath form.[168] Other new states, such as Oklahoma, North Dakota and South Dakota, elected to couple the Field Code duties with a "do no falsehood" oath.[169]

By the turn of the century, at least seventeen states had adopted some version of the Field Code statement of duties.[170] Even though the Field Code statement of duties is a modest list by modern standards, the Field Code helped develop and

---

163. *Id.* § 511, pages 204-09.

164. *Id.* at 205 (commentary).

165. *Id.* § 525(4) (providing for professional discipline for a "willful violation of any of the provisions of § 511").

166. The Field Code otherwise addressed admission by setting standards— "[a]ny male citizen, of the age of twenty-one [. . .], of good moral character, and who possesses the requisite qualifications of learning and ability," *Id.* § 507—and by requiring the court to conduct an examination of the applicant in open court. *Id.* § 508.

167. ALA. CODE §738 (1852) (duties); *Id.* § 735 (oath); Idaho Gen. Law. § 120 (1880-81) (duties); *Id.* § 117 (oath); Indiana Rev. Stat. XLV Sections 769 (oath) and 771 (duties) (1852); IOWA CODE, § 1610 (1851) (oath); *Id.* § 1614 (duties); Laws of the Territory of Nebraska, ch V., § 4 (1857) (oath); *Id.* § 5 (duties); Laws of Oregon, 1843-1872, Title II, § 1004 (Semple 1874) (oath); *id.* § 1006 (duties).

168. In 1863, the Washington Territory adopted the Field Code statement of duties, but by 1908, Washington converted the statement to an oath without the duty to not encourage suits out of "any motive of passion or interest." Washington Session Laws, 1909, ch.139 § 6 (stating oath); *see also* 31 A.B.A. REPORTS, *supra* note 67, App. D (reprinting Washington oath in 1908).

169. Oklahoma, for example, in Section 4 of its 1890 Territorial Act, adopted the Field Code duties, *see* Statutes of Oklahoma, Ch. 7, § 4 (1890), and in Section 2 imposed the following "do no falsehood" oath:

> You do solemnly swear that you will support, protect and defend the [C]onstitution of the United States, and [the Constitution of] the Organic Act of the Territory of Oklahoma; that you shall do no falsehood or consent that any be done in court[,] and if you know of any you will give knowledge thereof to the judges of the court, or some one of them, that it may be reformed; you shall not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you shall delay no man for lucre or malice, but shall act in the office of attorney in this court according to your best learning and discretion, with all good fidelity as well to the court as to your client, so help you God.

Id. § 2. Oklahoma uses substantially the same oath today. *See infra* note 282. The combined territory of Dakota had a similar scheme. *See* Revised Codes of the Territory of Dakota, Chapter 18, § 2 (1862)(oath); *Id.* § 4 (duties).

170. *See* Andrews, *supra* note 2, at 1426, n. 284. New York, where the Field Code began, did not adopt the statement of duties. *Id.* at 1426, n. 283.

refine standards of lawyer conduct by adding "new" substantive provisions not previously stated in American oaths or statutes. The Field Code codified duties of confidentiality and public service, and this formalization seemingly was without controversy.[171] By contrast, the Field Code's statement of litigation advocacy duties provoked some dissent and debate.

The Field Code codification likely was the first time that the "just" causes duty was part of a formal dictate in the United States. It also seemingly was the first formal distinction made between the litigation duties of criminal defense lawyers and those of lawyers involved in civil litigation. Under the Field Code, criminal defense lawyers were subject to limitations against use of false evidence and other misconduct but, unlike civil litigators, they did not have to consider whether their client's cause was "just." Field himself added commentary (unusual for the Field Code) as to the limits of proper advocacy. He explained that contrary to the position attributed to Lord Brougham,[172] lawyers had limits on their advocacy even in criminal cases.[173]

Other commentators soon joined Field in endorsing the "just" causes limitation. For example, in 1867, Bethune Duffield spoke to Michigan law students on legal ethics, explaining each line of the 1816 Swiss oath, and with regard to the "just" causes clause, he stated:

> Under this clause, may a Lawyer properly advocate a bad cause? There are some lawyers who will tell you that he may . . . In support of his cold-steel style of practice, they will refer you to so eminent a person as Lord Brougham I

171. Although confidentiality and public service were not stated in earlier formal oaths or statutes, both concepts were part of the general lore and tradition of lawyers in the United States. *See* Andrews, *supra* note 2, at 1422-23.

172. Field Code, *supra* note 162, at 207 (suggesting that the view attributed to Lord Brougham, that the lawyer must "lose sight of every other consideration than of success," is a doctrine "unsound in theory, and most pernicious in practice"); *see also id.* at 206 (lamenting the popular misconception—"grave errors"—that lawyers were indifferen[t] to the moral aspect of the cause they advocate).

173. Field commented:

> We by no means assert, that an advocate may not take upon himself the defense of a man whom he believes to be guilty. He may. The section we propose permits him to do so. If he have derived his belief from the confession of the accused, he should pause in assuming his defense. The law gives to every man charged with crime, the benefit of the rule that his innocence is to be presumed by his judges, until the prosecution have established his guilt, by proof beyond a reasonable doubt. Of this rule the advocate is the intermediate minister. Notwithstanding his own conjectures, surmise, or even beliefs to the guilt of his client; he may not become his judge, but is justified if not bound to enforce its application to the inconclusiveness of the evidence of guilt. He may do this, the more readily, because even the jury themselves are bound to secure to the accused the benefit of its application. He may also undertake to show the circumstances of his case; to present the palliating circumstances of temptation, or of provocation, or anything else, that may affect the moral quality of the action, or determine the degree of punishment . . . . But here the advocate should stop. The law and all its machinery are means, not ends; the purpose of their creation is justice; and he, who, in his zeal of the means, forgets the ends, betrays not only an unsound hear, but an unsound understanding.

Id. at 207-08.

> trust it is not necessary for you to be told, that when this principle is adopted by the legal profession, and approved by the courts, it can only be, when the latter have long ceased to be tribunals for the administration of Justice, and Attorneys have become licensed robbers, and moral outlaws in society.[174]

Not everyone agreed. Indeed, many modern observers claim that David Dudley Field later changed his own position, as reflected by his representation of high profile corporate clients in the late nineteenth century.[175] Some states formally rejected some of the Field Code's litigation components. Alabama, Georgia, Mississippi and Louisiana deleted the "just" causes clause from their Field Code statement.[176] Nebraska and Washington omitted from their codes the duty to not encourage cases out of "any motive of passion or interest."[177]

Thus, the end of the nineteenth century was a turning point in American legal ethics.[178] Jurists, lawyers, and academics were increasingly addressing legal ethics, and lawyers in many states had statutes dictating their standards of conduct. The oath played a role throughout this development and as the twentieth century dawned, the oath continued to guide development of ethical standards. This new development came in a different form—bar association codes of ethics.

III. THE ABA MODEL OATH

In 1908, the American Bar Association adopted national model standards of conduct. The oath was an essential part of the ABA's 1908 project, in both form and substance. The ABA proposed that the oath serve as the regulatory portion of its model compilation with the more detailed Canons supplementing the model oath's basic provisions. Moreover, the content of the oath was a catalyst for debate: the oath's "just" causes duty was a focal point for the ABA's central debate as to proper litigation conduct. Yet the model oath soon encountered the modern regulatory state. Demand for "black letter" rules and regulatory detail rendered the oath inadequate as the primary form of lawyer regulation. The ABA turned its attention to further developing the Canons and its successors, the *Model Code of Professional Responsibility* and the *Model Rules of Professional Conduct*. The model oath fell into the shadows of these new rules.

---

174. Duffield, *supra* note 121, at 9-10. Duffield further argued that lawyers should "pause well and long before assuming" the defense of "an evil minded man" who has "freely and frankly confesse[d] his guilt." *Id.* at 10.

175. *See* Hoeflich, *supra* note 122, at 814-16 (discussing Field's legal work and correspondence).

176. *See* ABA Memorandum For Use of ABA's Committee to Draft Canons of Professional Ethics, at 112 (March 23, 1908) [hereinafter *REDBOOK*] (reporting state variations as of 1907). Louisiana deleted this duty and added an eighth duty "to live uprightly; and in our persons, to justify before men the dignity, honor, and integrity of great and noble profession." 31 A.B.A. REPORTS, *supra* note 67, at 714 (App. C).

177. Laws of the Territory of Nebraska, ch V., § 5 (1857). *See supra* note 168 (Washington oath).

178. *See generally* ANDREWS, *supra* note 2, Part III (discussing evolution of legal ethics in nineteenth century legal ethics).

A. EARLY STATE BAR ASSOCIATION CODES

At the end of the nineteenth century, some states began to ponder creation of more detailed rules of conduct for lawyers, in the form of bar association codes of ethics, to supplement their Field Code statements of duty and their lawyer oaths. Alabama took the lead. In 1887, the Alabama State Bar Association promulgated a new code of ethics for Alabama lawyers.[179] The state of Alabama already had adopted a modified version of the Field Code statutory duties and a simple oath by which the lawyer swore to abide by the statutory duties.[180]

The Alabama 1887 bar association code included fifty-six relatively detailed rules that built upon these pre-existing duties.[181] Of particular note were the rules expounding on the proper litigation role of Alabama lawyers. Alabama did not adopt the Field Code "just" causes duty,[182] and its bar association's code took a nuanced position on this issue. Rule 13 stated that a lawyer could not reject a criminal defendant "because he knows or believes him guilty,"[183] and Rule 14 required a lawyer to decline a civil case "when satisfied" that the client had improper purposes.[184]

Other states followed Alabama's example. By 1907, at least ten states had adopted codes substantially similar to the 1887 Alabama Code, and more states were considering such codes.[185] Thus, at the beginning of the twentieth century, there was a growing array of formal statements of legal ethics. Most lawyers swore to the same oaths that lawyers took a century earlier, but many also had statutory and bar association statements of their duties. State regulation continued to be sporadic, both in form and content. In 1908, the newly formed American Bar Association acted to help regularize and promote standards of conduct.

B. ADOPTION AND PURPOSE OF THE 1908 ABA MODEL OATH

In 1908, the ABA adopted and published a national set of model ethics standards that consisted of both a model oath and *Canons of Ethics*.[186] This project began three years earlier, in 1905, when the president of the ABA asked the ABA to respond to criticism about lawyers and ethics,[187] including

---

179. *See generally* GILDED AGE, *supra* note 2 (exploring the 1887 Alabama Code).

180. From 1852 to 1907, Alabama statutes generally dictated that lawyers take an oath to support the laws of Alabama and the United States and to abide by the (Field Code) statutory duties. *See supra* note 167. In 1907, an Alabama statue dictated the "[do] no falsehood" form of oath. *See* Alabama Code § 2978 (1907).

181. *See* GILDED AGE, *supra* note 2, at 46-59 & 110-130 (reprinting 1887 Alabama Code).

182. *See supra* note 173.

183. *Id.* at 50-51.

184. *Id.* at 51 ("merely to harass or injure the opposing party or to work oppression and wrong").

185. *See* 31 A.B.A. REPORTS, *supra* note 67, at 685.

186. For a detailed review of the drafting history of the *Canons*, see James M. Altman, *Considering the ABA's 1908 Canon of Ethics*, 71 FORDHAM L. REV. 2395 (2003).

187. *See* 28 A.B.A. REPORTS, *supra* note 67, at 384 (address of ABA president, Henry St.George Tucker); *id.* at 132 (appointing committee to study advisability of a professional ethics code).

disparaging remarks by President Theodore Roosevelt.[188] The next year, an ABA committee responded that there was a need to "crystallize abstract ethical principles" and to promote uniform standards.[189] The ABA asked a committee to draft a model code of ethics.[190]

The ABA drafting committee surveyed existing statements of ethics and concluded that the 1887 Alabama Code was both the prevailing model and a "safe" basis on which to build the ABA code.[191] The drafting committee elected to use the 1887 Alabama Code as a form of draft code, which it sent to its members for comment, along with samples of other ethics statements, primarily lawyer oaths.[192] The ABA drafting committee received over 1,000 comment letters in response, and the committee collected these in a single notebook, called the "Red Book."[193] The committee then drafted the *Canons of Ethics* and a model oath, a scheme that corresponded to those existing in many states.

The ABA approved both the model oath and the *Canons of Ethics*, with relatively little debate, at its 1908 annual meeting.[194] The final version of the ABA 1908 Canons of Ethics closely mirrored the 1887 Alabama Code.[195] The approved 1908 version of the ABA model oath was as follows:

> I will support the Constitution of the United States and the Constitution of the State of . . . ;
>
> I will maintain the respect due to the Courts of Justice and judicial officers;
>
> I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defenses except such as I believe to be honestly debatable under the law;
>
> I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

---

188. *See* Altman, *supra* note 186, at 2399, 2402-09 (noting Roosevelt's June 1905 Harvard address in which he, among other things, described lawyers as "hired cunning").

189. 29 A.B.A. REPORTS, *supra* note 67, at 603-04.

190. *Id.* at 600-04 ("Report of the Committee on Code of Professional Ethics") (recommending appointment of a committee to investigate and draft a model code).

191. 28 A.B.A. REPORTS, *supra* note 67, at 61-64 (reporting that the 1887 Alabama Code was "a form which may be safely adopted").

192. 31 A.B.A. REPORTS, *supra* note 67, at 676-736 (compilation of ethics materials).The compilation started with the 1887 Alabama Code and its preamble recited Alabama's version of the Field Code; as a comparison, the ABA printed Michigan's modified "do no falsehood" oath. *Id.* at 685-88. Appendix C reprinted the Louisiana Bar Association's Code of Ethics, modeled on the Field Code. *Id.* at 714. Appendix D stated the Washington oath, which was the Field Code in oath form. *Id.* at 714-15. Appendix E stated the original 1816 Swiss oath. *Id.* at 715-16. The last three appendices reprinted the 1683 oath of Denmark and Norway, David Hoffman's resolutions, and a twentieth century German lawyer's oath. *Id.* at 717-36. Finally, the ABA distributed a separately bound copy of George Sharswood's essay. 32 A.B.A. REPORTS, *supra* note 67.

193. REDBOOK, *supra* note 176.

194. The ABA House of Delegates made only one change to the committee's draft Canons, regarding contingent fees, and no changes to the proposed model oath. *See* REDBOOK, *supra* note 176, at 55-86.

195. *See* GILDED AGE, 2, at 111-32 (rule-by-rule comparison of 1887 Alabama Code and ABA 1908 Canons).

> I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;
>
> I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;
>
> I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.[196]

Much has been written about the Canons and their drafting,[197] but the model oath remains unexplored. This dearth of attention belies the role of the model oath in 1908. The ABA intended the oath to be the proposed regulatory part of its new ethics compilation.

The most significant statement as to the purpose of the ABA model oath was in the drafting committee's final report, dated August 1908.[198] The final report stated that the oath "resulted" from the first of two proposals made by former United States Supreme Court Justice David Brewer.[199] Soon after the ABA project began, Justice Brewer suggested that the drafting committee keep two objectives in mind: one, preparation of a "clear and concise" "body of rules to be given operative and binding force," and two, "preparation of a canon of ethics, which shall discuss the duties of lawyers under the various conditions of professional action."[200] Justice Brewer joined the drafting committee, and according to the final report, the committee drafted the model oath to satisfy Justice Brewer's first stated objective of a short set of binding duties.[201]

---

196. 33 A.B.A. REPORTS, *supra* note 67, at 584-85 (commending model oath "for adoption by the proper authorities in all the states and territories").

197. *See generally* Andrews, *supra* note 2, at 1441-42 (collecting and discussing commentary on ABA 1908 Canons).

198. 33 A.B.A. REPORTS, *supra* note 67, at 567-86 ("Final Report of the Committee on Code of Professional Ethics").

199. The final report of the drafting committee stated:

> The committee approved the suggestions of Mr. Justice Brewer . . . The first of his two proposals, 'the preparation of a body of rules,' few in number, clear and precise in their provisions, so that there can be no excuse for their violation,' 'to be given operative and binding force by legislation or the action of the highest courts of the states, assuming that those courts have, as doubtless they have in some states, the power to make and enforce such rules,' has resulted in the recommended form for Oath of Admission.

Id. at 579 (emphasis and citation omitted).

200. 31 A.B.A. REPORTS, *supra* note 67, at 62-63 (quoting Brewer letter). The drafting committee invited Justice Brewer to join the committee. *Id.*

201. The final report stated:

> The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyer as defined by statutory enactments in that and many other states of the union—duties which are sworn on admission to obey and for the willful violation of which disbarment is provided.

The member comments as to the model oath primarily addressed its general form and function. Some argued that the oath should serve as a reminder of a lawyer's duties.[202] For example, one comment argued "strongly in favor of embodying in the lawyer's oath of office some statement of the principles which are to govern him in the future conduct of his office."[203] Another said that a detailed oath would remind the lawyer upon admission "in brief form, what his duties as an attorney would be, and advise him that any neglect to perform this duty would be followed by disbarment, or other proper proceedings."[204] On the other hand, one commentator wanted a simple oath, arguing that the detailed oath was like asking lawyers "to swear to the separate sections of the Revised Statutes."[205]

The substantive content of the oath prompted less comment and debate than did the Canons, but this does not diminish the role of the oath.[206] The oath was to be the legally binding element of the ABA ethics compilation. This disparity in comments likely was due to two factors. First, the Canons were far more detailed statements of ethics than those in the oath, and as such, they necessarily drew more attention.[207] Justice Brewer anticipated this different level of commentary: he predicted that drafting the Canons, as opposed to the short list of duties (in the oath), would "open a wide field for discussion and the temptation will be to cover too much ground."[208] Second, the ABA had a longer tradition to draw upon in framing the oath. The Canons, by comparison, were new articulations of particularized application of the duties, some dating back only twenty years to the 1887 Alabama Code.

C. THE SUBSTANCE OF THE 1908 ABA MODEL OATH

The ABA model oath differed from both the Swiss oath and the Field Code in its statement of duties. It also differed from the Washington oath, which the ABA

---

33 A.B.A. REPORTS, *supra* note 67, 584-85.

202. The Redbook contained five pages of comments directed specifically to the oath. REDBOOK, *supra* note 176, at 108-113 ("In Re Form of Oath to Be Administered on Admission to Bar"). Three comments argued for either the Swiss oath or the Washington version. *Id.* at 108-09. Three others argued for the "do no falsehood" oath, as then used in Michigan, North and South Dakota and Massachusetts. *Id.* at 109-10. Another stated a preference for New York's simple oath. *Id.* at 108.

203. *Id.* at 109.

204. *Id.*

205. *Id* at 68. In the margins, in response to this comment, a member of the drafting committee noted: "It would be if these things [the "duties" of attorneys] were in the Statutes." *Id* at 108.

206. *See supra* notes 202-205 (member comments on oath). In the final ABA adoption debate in 1908, only one delegate addressed the oath by stating: "I presume the committee simply means to recommend that ancient form of oath—not the precise words." 33 A.B.A. REPORTS *supra* note 67, at 86. The ABA president and member of the drafting committee responded "[t]hat is all." *Id.*

207. For example, most ethicists and lawyers will agree to the general concept of loyalty, but they may not agree as to its application to a variety of specific conflicts of interest scenarios. *See* Andrews, *supra* note 2, at 1456 (discussing this phenomenon).

208. 31 A.B.A. REPORTS, *supra* note 67, at 62-63.

final report credited as the source of the model oath.[209] The ABA model oath did not match any oath or Field Code statement collected by the ABA. Some of the changes to the oath were minor, but others reflected the ABA's larger debate as to evolving standards of proper litigation ethics.

1. THE "JUST" CAUSES CLAUSE

The most important change in the ABA oath was the rewording of the duty regarding "just" causes. The Field Code and the Washington oath stated the duty affirmatively, mandating that the lawyer maintain only such actions that appear to him to be just.[210] These versions of the duty subjected all civil claims and defenses to the "just" standard, but they limited criminal defense only by the general bar against false or misleading statements.

The ABA oath reversed the standard, from "just" to "unjust." Under the 1908 ABA model oath, lawyers could not maintain claims or proceedings that appear "unjust" ("I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust").[211] In addition, the ABA oath applied a new single "honestly debatable" standard to both civil and criminal defenses ("nor any defenses except such as I believe to be honestly debatable under the law").[212]

The issues raised by the "just" causes clause were not just a matter of the wording of the oath; they comprised the core debate in the entire 1908 ethics project.[213] As part of the drafting process, the ABA sent to its members an "earnest" request for comments on a question the ABA termed as "acceptance of retainers."[214] This label is misleading today. The ABA request and ensuing debate did not concern fees or formalization of the attorney client relationship but instead the proper advocacy role of the lawyer. This was "'the most hotly

---

209. 33 A.B.A. REPORTS, *supra* note 67, at 584-85.

210. *See supra* note 166.

211. *See supra* note 196.

212. *Id.*

213. *See* Susan D. Carle, *Lawyers' Duty To Do Justice: A New Look at the History of the 1908 Canons*, 24 LAW & SOCIETY INQUIRY 1, 2 (1999) ("Perhaps no issue in legal ethics has been debated more often, and resolved less satisfactorily, than that of lawyers' duties—in civil cases—to concern themselves with the 'justice' of their client's cause.").

214. The ABA committee, in distributing the draft code and compilation of ethics materials to the ABA membership, posed the following "earnest" request:

> . . . give us the benefit of your advice, *crystallized into specific canons*, concerning the principles which should ever guide the lawyer, true to his country, his client and himself, in accepting the retainers of individuals and of corporations and in representing or advising them, knowing that by virtue of the establishment of the relation of counsel and client it will be his duty, *within the scope of the retainer*, to guard by every honorable means and to the best of his learning and ability the legal rights of the client. A full discussion of the principles involved will be found running throughout *Sharswood's Ethics*. . . .

REDBOOK, *supra* note 176, at 98 (emphasis in original); *see generally id.* at 98-107 ("Replies In Re Acceptance of Client Retainers") (collecting comments in response the question).

discussed topic'" among members of the drafting committee,[215] and the debate extended to both the model oath and the Canons.[216]

The ABA, as part of its initial request for member comments, sent its members numerous oaths and the works of both David Hoffman and George Sharswood.[217] In response, many ABA members challenged Hoffman's views on litigation, particularly his position that a lawyer in some cases should not assert valid defenses, such as the statute of limitation.[218] Others questioned the "just" causes clause of the oath. One member urged that lawyers must be free to argue cases for the court's decision.[219] Simeon Baldwin, the founder and former president of the ABA, in a 1908 article[220] reported that both the Swiss oath and the Washington oath "were subject to serious criticism" regarding the "just" causes clause because the clause required the lawyer to be "satisfied that a suit or defen[s]e is just, before he can take the first step in court."[221] The oath duty forced "the lawyer into the position of a Judge, before the case has been brought and heard."[222] This criticism was not universal. Several states used this clause in their oath or in their Field Code statement of duties, and Thomas Hubbard, a prominent legal ethicist and a member of the drafting committee, wanted the clause in both the model oath and the Canons.[223]

In the end, the ABA did not reject the "just" causes clause altogether but instead adopted a more restrained version. The ABA committee's final report on the oath stated that the committee had "reframed" the clause in order to embody

---

215. Altman, *supra* note 186, at 2457. *See* Carle, *supra* note 213, at 6-31 (exploring ABA debate as to "duty to do justice").

216. The Red Book compilation of comments as to the model oath concluded by referring the reader to related comments regarding selected Canons. REDBOOK, *supra* note 176, at 113 (referring the reader to "the comments in subdivision I of this Memorandum with reference to Canons 11, 14, 15 and 23"). *See also* Altman, *supra* note 186, at 2420 n.159 (reporting correspondence of drafting committee that stated that Canon 30 and the oath "just causes" clause needed further redrafting).

217. *See supra* note 192.

218. "I do not believe that it would be proper to embody in the code a rule which makes it unprofessional for a lawyer to make defense expressly sanctioned by the laws of the land." REDBOOK, *supra* note 176, at 92. The Red Book devoted an entire section to member comments concerning Hoffman's resolutions."). *Id* at 91-94 ("In Re Hoffman's Resolutions").

219. "Is it plain, even that Washington 3 [the "just" cause clause] is correct? May a man not argue what he thinks is not the law to a Court? He may be wrong—and to decide is the Court's job?" REDBOOK, *supra* note 176, at 113 (anonymous "XYZ").

220. Simeon Baldwin, *The New American Code of Legal Ethics*, 8 COLUM. L. REV. 541 (1908) (advocating multi-state adoption of the model oath and Canons of Ethics). *See* Altman, *supra* note 186, at 2417 n.142 (discussing Baldwin's role in founding ABA, his political and judicial career in Connecticut and his professorship at Yale Law School).

221. Baldwin, *supra* note 220, at 545.

222. *Id.*

223. *Id.* at 107. Thomas Hubbard taught legal ethics at the Albany Law School and established a foundation for legal ethics there. Carle, *supra* note 213, at 18; *id.* App. A. Altman reports that Hubbard in an inaugural speech at Albany Law School in 1903 urged the importance of the lawyer's oath: "[t]he whole oath puts the responsibility of bringing suit, interposing defense, and of conducting either, exactly where that responsibility should be put, upon the conscience and honor of the lawyer." Altman, *supra* note 186, at 2449-51 n.312.

the ethical views and model distinctions espoused by Sharswood.[224] As to the details of this change, the final report stated only that "[t]he subject is too abstruse to discuss within the limitations of this report."[225] Again, Simeon Baldwin added some insight. He described the turn of the phrase from "just" to "unjust" as rendering the duty "much less onerous" because, under the model oath, a lawyer no longer had to affirmatively satisfy himself that the case was just.[226] Instead, a lawyer had only to refrain from bringing a claim if he was satisfied that it was unjust.[227] A lawyer could assert defenses, perhaps even those he considered "unjust," so long as the defenses were legally and factually debatable.[228]

2. THE MOTIVE (DELAY) CLAUSE

Although the "just" causes clause was the most debated change, the ABA also refined other litigation duties in the model oath. The ABA omitted the Field Code duty that lawyers not encourage or continue suits from any "motive of passion or interest." This change was not novel. The Washington oath excluded this duty, and Nebraska and Wisconsin also deleted this duty from their statutory statements of duties.[229] However, the Swiss oath, the Alabama Code, the Louisiana Code, and seemingly all other Field Code statements stated the duty.[230]

The ABA membership most likely did not disapprove of the substance of the "motive" duty. Canon 28 strongly spoke against a lawyer stirring up litigation for his own interest,[231] and Canon 30 barred a lawyer from bringing a claim "when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong."[232] The issues underlying these Canons were discussed and debated at length in the drafting process, but no comment argued against the motive duty in the oath.[233] To the contrary, the ABA president, a member of the drafting committee, argued for including the clause.[234]

Another variation between the ABA model oath and the Field Code may explain the deletion of the "motive" clause. In the seventh clause of the model

---

224. The ABA committee stated: "We have reframed the third paragraph of the recommended form for oath of admission, embodying therein the distinction made by Sharswood . . . which should be made 'between the case of prosecution and defense for crimes; between appearing for a plaintiff in pursuit of an unjust claim, and for a defendant in resisting what appears to be a just one.' " 33 A.B.A. REPORTS, *supra* note 67, at 572.

225. *Id.*

226. Baldwin, *supra* note 220, at 545.

227. *Id.*

228. *Id.*

229. *See* REDBOOK, *supra* note 176, at 112 (noting Nebraska and Wisconsin variations).

230. *See supra* notes 166-177.

231. 33 A.B.A. REPORTS, *supra* note 67, at 582-83 (Canon 28).

232. *Id.* at 583 (Canon 30).

233. REDBOOK, *supra* note 176, at 29-30 (discussing proposed Canon 15, which became final Canon 30); 33 A.B.A. REPORTS, supra note 67, at 42-46 (discussing proposed Canon 23, which became final Canon 28); *id.* § IV, 98-107 (comments concerning "Acceptance of Retainers").

234. *Id.* at 108.

oath, the ABA added a duty that the lawyer not "delay any man's cause for lucre or malice."[235] This clause stated duties similar to those in the deleted "motive" clause, and it may have been seen as a superior substitute. Both clauses barred litigation tactics based on specified ill motives. They both mirrored the prohibition, in Canon 30, against bringing claims or making defenses "merely to harrass, or to injury or to work oppression or wrong."[236] ABA members possibly preferred the phrasing of the delay clause, with which they were more familiar, as part of the "do no falsehood" oath.[237]

3. THE "NEVER MISLEAD" CLAUSE

The model oath added "or jury" to the duty in the fourth clause not to mislead the judge. The ABA comments do not mention this change, but Simeon Baldwin explained it as correcting an oversight in the American adoption of the Swiss oath (Field Code).[238] In Baldwin's view, the Swiss duty "may have been sufficient in a country having no system of trial by a jury, but the committee, in view of the prevalence of that system here, properly added [juries to the duty]."[239]

4. THE "NO COMPENSATION" CONFLICT CLAUSE

The final change was in the fifth clause of the model oath. The ABA added a duty that the lawyer not accept any compensation from persons other than the client without the client's approval. This duty did not have an obvious model in the oaths and other materials collected by the ABA. The "new" duty was a relatively modest and non-controversial rule governing a particular conflict of interest,[240] but its insertion into the oath is somewhat mystifying. In 1908, the ABA discussed conflicts concerns generally in connection with the Canons, but no member comment specifically raised the problem of a lawyer receiving compensation from a person other than the client.[241] The oath arguably needed to state a conflict of interest duty—the oath otherwise had no provision addressing conflict of interest—but this narrow duty did not fit the ABA's intention to list "general principles"in the model oath. Simeon Baldwin described this addition as

---

235. *See supra* note 196.

236. *See* 33 A.B.A. REPORTS, *supra* note 67; *id.* at 583 (reprinting Canon 30).

237. Baldwin reported that the model oath version of this clause was taken from "the ancient New England form, dating back to early colonial days" (likely the Massachusetts "do no falsehood" oath). Baldwin, *supra* note 220, at 546.

238. *Id.*

239. *Id.*

240. In 1928, the ABA added a new Canon to state this duty: a "lawyer should accept no compensation, commission, rebates or other advantages from others without the knowledge and consent of his client after full disclosure." *ABA Comm. on Prof'l Ethics and Grievances*, at 173-75 (1967) (Canon 38).

241. *See* REDBOOK, *supra* note 176, at 57 (comments concerning draft canon, entitled "Disclosing Adverse Influences"). In 1908, the ABA approved with no debate Canon 6 ("Adverse Influences and Conflicting Interests"). 33 A.B.A. REPORTS, *supra* note 67, at 576-77.

having "doubtful merit, because it refers to a practice which can never be of common occurrence."[242] Baldwin argued that the ABA's addition of this clause was ill advised, because "a lawyer's oath of office should be confined to obligations of fundamental importance and general concern."[243]

D. THE FADING OF THE ABA MODEL OATH

For many years after 1908, the ABA prominently featured the model oath alongside the Canons. The ABA annual reports regularly reprinted both the Canons and the model oath together.[244] Over time, the focus shifted to the Canons, and the Canons sparked increasing debate. Over a period of sixty years, the ABA substantially reworked the Canons.[245] In 1970, in response to demand by lawyers and critics for more detailed regulatory standards, the ABA abandoned the Canons and adopted the *Model Code of Professional Responsibility*, which had broad ethical principles, followed by "disciplinary rules," and commentary.[246] Thirteen years later, in 1983, the ABA went one step further and replaced the *Model Code* with the *Model Rules of Professional Conduct*, which were explicitly "black letter [r]ules" for enforcement and discipline of lawyers.[247]

Meanwhile, the model oath garnered relatively little notice. The only portion of the model oath to draw debate was, once again, the "unjust" causes clause. Beginning in the 1950s, one lawyer, Murray Seasongood, repeatedly urged the ABA to reform the clause.[248] Seasongood argued that a lawyer must not prejudge his client's case and that the oath clause suggested otherwise.[249] Seasongood also believed that the oath improperly subjected claims to a different standard than defenses.[250] His efforts ultimately succeeded. In 1977, the ABA deleted the "unjust" standard from the clause altogether and subjected all litigation proceedings—claims and defenses—to the same "honestly debatable" standard.[251] This was the lone modification to the ABA model oath after its adoption in 1908.

The ABA's move in 1977 to remove the "just" (unjust) standard from the model oath had little practical impact. Apparently no state has adopted the 1977

---

242. Baldwin, *supra* note 220, at 546.

243. *Id.*

244. 43 A.B.A. REPORTS, at 7-16 91923) (reprinting Canons and model oath); 62 A.B.A. REPORTS, at 1105-1122 (1937) (same).

245. *See* Andrews, *supra* note 2, Part IV, 1440, 1443.

246. MODEL CODE OF PROF'L RESPONSIBILITY (1970).

247. THE LEGISLATIVE HISTORY OF THE MODEL RULES OF PROFESSIONAL CONDUCT: THEIR DEVELOPMENT IN THE ABA HOUSE OF DELEGATES, at 3-4 (1987).

248. *See* Murray Seasongood, *What Employment Must a Lawyer Accept?*, 1956 PRAC. LAW. 43; *See* Murray Seasongood, *Sequel to "What Employment Must a Lawyer Accept?,"* 9 PRAC. LAW. 41 (1963).

249. *Id.*

250. *Id.*

251. 102 A.B.A. REPORTS, *supra* note 67, at 224-25 (adopting revision of oath); *id.* at 259 (report of committee recommending change). The oath new model was as follows: "I will not counsel or maintain any suit or proceeding, nor any defense except such as I believe to be honestly debatable under the law of the land." *Id.* at 259.

version of the ABA model oath, and many states retain either the original 1908 model oath language or the original Field Code statement of the "just" causes duty.[252] This practice persists even though the "just" causes standard arguably is inconsistent with the *Model Rules*' substantive standards regarding litigation conduct. This is a flaw of modern oath practice that is discussed in the next section. The point here is the reason for the incongruity: lawyer oaths no longer are the focal point of legal ethics. Indeed, putting attorney Seasongood aside, the model oath was mostly ignored during the latter half of the twentieth century.

Today, ABA model ethics compilations typically do not include the model oath.[253] Lawyers and academics study the *Model Rules*, but few today know that a model oath exists. Even within the ABA, the status of the model oath is unclear. Recently, ABA officials investigated and determined that the model oath was never formally repealed, and they were unable to determine whether the model oath was "archived."[254]

The obscurity of the model oath is not surprising. The ABA's intended role for the model oath was a short list of legally enforceable rules.[255] This short list was not sufficient in the regulatory age of the late twentieth century, when the *Model Code* and then the *Model Rules* assumed standard-setting and regulatory functions. Nevertheless, the oath lives on, in one of three basic forms, albeit in a more modest and less defined role.

IV. MODERN LAWYER OATHS IN THE UNITED STATES

The oaths in most jurisdictions in the United States today can be traced to either the French tradition (the Swiss and ABA model oath) or the English tradition (the "do no falsehood" and the simple oath). Even though the oath today no longer plays as prominent a role as it once did, it is not a meaningless gesture. The oath, in all its forms, continues to serve regulatory functions, as a prerequisite to the practice of law and as a basis for discipline, and ethical functions, as a reminder and as an inspiration to ethical ideals. Both the regulatory and ethical functions of the modern oath, however, can be enhanced. The oath would better serve the profession if it more accurately and clearly stated the essential ethical maxims by which lawyers swear to abide.

A. FORMS OF MODERN LAWYER OATHS

Lawyer oaths are surprisingly constant over both place and time. Oaths are not identical, but the variation is relatively minor. Almost all oaths or statements of

252. *See infra* notes 273-276.

253. For example, in the ABA Reports for 1983, the ABA reprinted the newly adopted Model Rules without an accompanying model oath. 108 A.B.A. REPORTS, at 1215-1316 (1983).

254. Archival is not a formal repeal or change in policy, but archived material is not considered current ABA policy. Email from Art Garwin (Jan. 9, 2007) (on file with author).

255. *See supra* Part III.B.

duty are derived from three basic forms: the Swiss or ABA oath, the English "do no falsehood" oath, and the English simple oath.

1. THE SWISS (ABA) OATH

Many lawyers may be surprised to learn that their oath has a French rather than Anglo origin. The French influence is reflected by the widespread adoption of some version of the Swiss oath. The Swiss oath itself is almost 200 years old, but its lineage dates back even further, to medieval France.[256] This tradition prompted one observer in 1908 to remark that "[a]s a matter of historical sequence it is strange how, step by step, the regulations which are imposed on the Bar of the Greatest Republic of modern times [the United States], can in each instance be placed parallel with some similar ordinance promulgated by the Kings of France to the Bar of Paris."[257]

Almost half the states in the union now bind lawyers to some version of the duties of the Swiss oath.[258] At least ten states follow the Field Code model and assert the duties as a statutory obligation, rather than in oath form.[259] Idaho,[260] Indiana[261] and New Mexico[262] use two variations of the list—one as an oath and another as a statutory list of duties. Ten states today use a

256. *See supra* note 68.

257. Cox-Sinclair, *supra* note 61, at 180.

258. Iowa and Utah recently repealed their statutory statement of duties and now use a simple oath and the rules of professional conduct. *See* 2005 Iowa Acts (81 G.A.), ch. 179, H.F. 882 § 79 (repealing IOWA CODE § 602-10112); UTAH CODE ANN. § 78-51-1 (West 2006) (historical and statutory notes) (noting repeal of § 78-51-26 which provided for "duties of attorneys and counselors").

259. At least six states—Arizona, California, Georgia, Nebraska, North Dakota, and Oregon—use a simple oath and a Field Code statement of duties. AZ. SUP. CT. R. 41(g) (stating Field Code duties but substituting "unprofessional conduct" for "offensive personality," and adding obligation to follow Arizona Rules of Professional Conduct); CAL. BUS & PROF. CODE § 6068 West) (stating Field Code duties, omitting "offensive personalities" clause, modifying duty of confidentiality and adding duties concerning the disciplinary process); GA. CODE ANN., § 15-19-4 West) (stating Field code duties and omitting the "just causes" clause); NEBRASKA STAT. § 7-105 (stating Field Code duties and omitting "defenseless or oppressed" duty); N.D. CENT. CODE § 27-13-01 (2006) (listing duties based on 1908 ABA oath, deleting duties concerning confidentiality and "offensive personalities," and adding civility duties); OR. REV. STAT. ANN. § 9.260 (West 2006) (listing four Field Code duties—to support the constitution, never use misleading or false statements, maintain confidences and never reject the cause of the oppressed or defenseless). *See infra* note 292 (citations to simple oath). At least four states—Alabama, Minnesota, Mississippi and Oklahoma—state the Field Code statutory duties and use the "do no falsehood" oath. *See infra* note 285 (Ala.), note 288 (Minn.), note 289 (Miss.), and note 282 (Okl.).

260. *See infra* note 271 (Idaho oath and duties).

261. Indiana in 2005 updated its oath, which stated the original Field Code duties with the 1908 model oath "unjust" language, to include an expanded duty to never reject the "cause of the defenseless, the oppressed or those who cannot afford legal assistance." Indiana Rules for Admission to the Bar, R. 22. As its statutory duties, Indiana uses the Field Code list, adding duties to "promptly account" for client funds and to refrain from solicitation. IND. CODE ANN. § 33-43-1-3 (West 2006).

262. New Mexico used the 1908 model oath with a commitment to "comply with the Rules of Professional Conduct adopted by the New Mexico Supreme Court." N.M. Rules Governing Admission to Bar, R. 15-304. New Mexico also has a statutory statement of duties identical to the Field Code. N.M. STAT. ANN. § 36-2-10 (West).

version of the ABA oath. Four states—Florida,[263] Louisiana,[264] South Dakota,[265] and Wisconsin[266]—use oaths very close to the original 1908 ABA model. Michigan[267] and Washington[268] use modified versions of the 1908 model plus an additional clause promising compliance with the rules of professional conduct. Alaska made more significant modifications to its version of the 1908 oath.[269]

Idaho and South Carolina made variations to the ABA oath that reflect the modern "civility" movement.[270] Both states follow the basic format of the model oath but with some variation; they delete the "unjust" causes clause and the duty to "abstain from all offensive personality" and instead state litigation duties in more modern, affirmative language. Idaho's oath promises, among other things, to "scrupulously honor promises and commitments made" and to "attempt to resolve matters expeditiously and without unnecessary expense."[271] South Carolina states a duty to "maintain the dignity of the legal [profession]," a pledge

263. *See* FLORIDA STAT. ANN. Oath of Admission.

264. Louisiana's Bar Association's website lists an oath identical to the 1908 ABA form. *See* www.lsba.org/2007memberservices/lawyersoath.asp (last visited [ ]).

265. *See* S.D. CODIFIED LAWS § 16-16-18 (2006).

266. WIS. SUP. CT. R. 40.15.

267. Michigan adds a clause stating: "I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed on members of the bar . . ." Mich. Rules of Bar, R.15 § 3(1). Michigan has slightly updated language as to the "just" causes clause: "I will pursue a claim only if it is just, and will offer a defense only if it may be honestly debatable." *Id.*

268. Washington combines the 1908 ABA "unjust" causes with the Field Code exception for criminal cases ("I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust or any defense except as I believe to be honestly debatable under the law, unless it is a defense of a person charged with a public offense."). WASH. REV. CODE ANN. § 2.48.210 (West 2006).

269. *See infra* note 372 and accompanying text (quoting Alaska oath).

270. *See* Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX L. REV. 259 (1995) (summarizing and criticizing "civility" pledges and other moves to mandate courtesy and civility).

271. Idaho added civility elements throughout the oath:

> I will support the Constitution of the United States and the Constitution of the state of Idaho.
>
> I will abide by the rules of professional conduct adopted by the Idaho Supreme Court.
>
> I will respect courts and judicial officers in keeping with my role as an officer of the court.
>
> I will represent my clients with vigor and zeal and will preserve inviolate their confidences and secrets.
>
> I will never seek to mislead a court or opposing party by false statement or fact or law and will scrupulously honor promises and commitments made.
>
> I will attempt to resolve matters expeditiously and without unnecessary expense.
>
> I will contribute time and resources to public service, and will never reject, for any consideration personal to myself, the cause of defenseless or oppressed.
>
> I will conduct myself personally and professionally in conformity with the high standards of my profession.

Idaho Bar Comm'n Rules, R.214. Idaho also has a statutory statement of duties in the original Field Code form. IDAHO CODE ANN. § 3-201 (LexisNexis 2006).

to the client, promising "faithfulness, competence, diligence, good judgment and prompt communication," and a pledge to opposing parties and their counsel, promising "fairness, integrity, civility, not only in court, but also in all written and oral communications."[272]

Not surprisingly, the significant area of deviation among states using some version of the Swiss oath (either in oath form or as statutory duties) is the "just" causes duty. Some follow the 1908 ABA version of the duty, which bars a lawyer from bringing claims he believes to be "unjust," but which subjects all defenses, civil and criminal, to the "honestly debatable standard."[273] Some state the original Field Code duty barring all civil claims and defenses that the lawyer does not believe to be "just."[274] A few states use two different versions of the duty, one in oath form and a different one as the statutory duty.[275] Some states have deleted the duty entirely, either in a move made many decades ago or in a recent move to modernize the oath, but none of these deletions seem to have been the result of the 1977 ABA modification to the model oath.[276]

2. THE "DO NO FALSEHOOD" OATH

Thirteen states currently use a "do no falsehood" oath, an oath at least 600 years old.[277] Connecticut,[278] Kansas,[279] Maine,[280] New Hampshire,[281] Okla-

---

272. The South Carolina oath otherwise tracks the 1908 model oath. S.C. APP. RULES OF CT., R.402(k).

273. *See* S.D. CODIFIED LAWS § 16-16-18 (2008) (South Dakota oath); FLA. R. CT. (LexisNexis 2007) (Florida oath); WIS. SUP. CT. R. 10.15 (Wisconsin oath); *supra* note 264 (Louisiana oath). *See also* WASH. REV. CODE ANN. § 2.48.210, *supra* note 268 (variation in Washington).

274. *See* CAL. BUS. & PROF. CODE § 6068 (West 2008); MINN. STAT. ANN. §358.07(9) (West 2008). *See also* MICH. PROF. COND. R. 15 § 3(1) (Michigan modified "just" duty).

275. *See supra* notes 261-262 (Indiana and New Mexico model oath and Field Code duties).

276. *See* ALA. CODE § 34-3-15 (2008) (Alabama statutory duties); GA. CODE ANN. § 15-19-4 (West [ ]) (Georgia duties); IDAHO CODE ANN. § 3-201 (LexisNexis 2006) (Idaho duties); MISS. CODE ANN. § 73-3-35 (West 2006) (Mississippi duties); N.D. CENT. CODE § 27-13-01 (2006) (North Dakota duties); OR. REV. STAT. ANN. § 9.260 (West 2006) (Oregon duties).

277. *See supra* note 45.

278. *See* CONN. GEN. STAT. ANN. § 1-25 (West 2008).

279. Kansas has a longer version of the "do no falsehood" oath:

> You do solemnly swear or affirm that you will support and bear true allegiance to the Constitution of the United States and the Constitution of the State of Kansas; that you will neither delay nor deny the rights of any person through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the Supreme Court and all other courts of the State of Kansas with fidelity both to the Court and to your cause, and to the best of your knowledge and ability. So help you God.

KAN. SUP. CT. R. 704, available at http://www.kscourts.org/rules/ (follow "Rules Relating to Admission of Attorneys" hyperlink; then follow "704 Admission to the Bar Upon Written Examination" hyperlink).

280. *See* 4 ME. REV. STAT. ANN. tit. 4 § 806 (2008).

281. *See supra* note 104.

homa,[282] Rhode Island,[283] and Vermont[284] all use a longer form of the "do no falsehood" oath, close to the traditional English version. Six states—Alabama,[285] Delaware,[286] Massachusetts,[287] Minnesota,[288] Mississippi,[289] and Pennsylvania[290]—use a shortened, modified version of the "do no falsehood" oath. This modification had its origins in colonial America and typically omits the fee provisions and some variations also omit the duty to report falsehoods.[291]

3. THE SIMPLE OATH

Twenty-one states and most federal courts use a simple oath in which the lawyer swears to support the relevant laws and constitution and also promises good conduct.[292] These oaths have at least a 300-year history, dating back to the 1729 English oath that was later adopted and modified by some colonies and early states. For instance, the United States Supreme Court adopted its simple oath in 1790 and continues to use that oath today, with only minor refinements.[293] The Supreme Court version is the prevailing oath in federal courts,[294] but a few

---

282. *See* OKLA. STAT. ANN. tit. 5 § 2 (West 2008). In addition, Oklahoma continues to use the Field Code statutory statement of duties. *Id.* § 3.

283. *See* R.I. SUP. CT. R. 8.

284. *See supra* note 105.

285. ALA. CODE § 34-3-15 (2008). Alabama has retained its statutory statement of duties without the "just" causes clause. *Id.* § 34-3-20.

286. *See* DEL. SUP. CT. R. 54.

287. MASS. GEN. LAWS ch. 221 § 38 (2008).

288. MINN. STAT. ANN. § 358.07(9) (West 2008. Minnesota also has a Field Code statute that adds a duty "to observe and carry out the terms of the attorney's oath." *Id.* § 481.06.

289. MISS. CODE ANN. § 73-3-35 (West 200) (modified "do not falsehood" oath). Mississippi has retained its statutory statement of duties without the "just" causes clause. *Id.* § 73-3-37.

290. 42 PA. CONS. STAT. ANN. § 2522 (West 2007).

291. *See supra* note 79, 106-107 (omission of fee provision from colonial oaths and early Delaware and Pennsylvania "do no falsehood" oaths).

292. *See* ARIZ. R. SUP. CT. 32(c)(3); ARK. CODE ANN. § 16-22-205 (West 2008) (Arkansas simple oath); CAL. BUS. & PROF. CODE § 6067 (West 2008); GA. CT. R. § 16; ILL. COMP. STAT. 205/4 (2006); IOWA CODE ANN. § 602-10110 (West 2006); MD. CODE ANN., BUS. OCC. & PROF., § 10-212 (West 2008); MONT. CODE ANN. § 37-61-207 (2008); NEB. REV. STAT. § 7-104 (2007); N.J. STAT. ANN. § 2A: 13-1 (West 2008); N.Y. JUD. CT. ACTSLAW § 466 (McKinney 2008); NY. CONST. art. XIII, § 1; N.C. GEN. STAT. ANN. § 11-11 (West 2008); N.C. GEN. STAT. ANN. § 84-28 (West 2008); N.C. CONST. art. VI, § 7; N.D. CENT. CODE § 27-11-20 (2008); N.D. Const. art XI, § 4; OR. REV. STAANN. § 9.250(2) (West 2007); TENN. SUP. CT. R. 6(4); TEX. GOV'T CODE ANN. § 82.037(a) (Vernon 2007); UTAH RULES OF PROF'L CONDUCT, preamble (2008); VA. CODE ANN. § 54.1-3903 (West 2008); W.V. SUP. CT. R. 7.0(d); WYO. R. OF ADMISSION 215. Finally, Kentucky uses a simple oath with an additional duty to forbear from participating in duels. KY. CONST. § 228.

293. "I . . . do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States." SUP. CT. R. 5.4. In 1970, the Court modified the oath slightly, substituting "conduct" for the older "demean" language. Spencer v. Kugler, 404 U.S. 1027 (1972) (Rule 5.4). *See supra* note 102 (1790 oath).

294. Federal oaths vary slightly, usually as to the "demean" versus "conduct" language. *See* LA. R. CT. 83.2 ("conduct"); E.D. PA. R. CIV. P.83.5 ("demean"). A few federal district courts use a slightly longer oath, with a more detailed allegiance element and additional vows to respect the court and comply with local rules and ethical standards. The Western District of Washington, for example, has the following oath:

federal courts use the ABA oath[295] or the "do no falsehood" oath.[296]

Five states have simple oaths with some additional language concerning civility and the rules of professional conduct. Hawaii, for example, requires lawyers to swear to the following:

> I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai'i, and that I will at all times conduct myself in accordance with the Hawai'i Rules of Professional Conduct.
>
> As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.
>
> I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.[297]

Missouri,[298] Colorado,[299] Nevada,[300] and Ohio[301] have similar oaths.

> I will support and defend the Constitution and the laws of the United Stats of American against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will well and faithfully discharge my duties as a lawyer, counsellor and proctor of this court; that I will maintain the respect due to the courts of justice and judicial officers and that I will demean myself uprightly and according to law and the recognized standards of ethics of the legal profession and abide by the Local Rules of this court.

W.D. WASH. R. 2(b)(3). *See also* N.D. GA. R. 83.1A)(2)(b); D. UTAH CIV. R. 83-1.1(D).

295. The Western District of Missouri and the Eastern District of Oklahoma both use the 1908 ABA oath. W.D. MO, R. 83.5(d); E.D. O. CIV. R. app. I. The Eastern District of Michigan attaches the 1908 oath as an appendix to its "civility principles." *See* E.D. MICH. R. app.

296. The Southern District of Alabama and the Western District of Texas, for example, use a modified, shortened version of the "do no falsehood" oath. S.D. ALA. R. app. 2 (2008); W.D. TEX. R. AT-1(e)(1). The District of Kansas uses the longer "do no falsehood" oath. D. KAN. R. 82.52(c).

297. HAW. SUP. CT. R. 1.5(c).

298. Missouri's oath is a blend between the model oath and the simple oath. MO. SUP. CT. R. 8.15 (2007).

299. A Colorado lawyer swears as follows:

> I will support the Constitution of the United States and the Constitution of the State of Colorado; I will maintain the respect due to Courts and judicial officers; I will employ only such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty. I will use my knowledge of the law for the betterment of society and the improvement of the legal system; I will never reject, from any consideration personal to myself the cause of the defenseless or oppressed; I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

Robert J. Truhlar, *Colorado Bar Association President's Message to Members: CBA Distributes Gold Cards and Remarks to New Attorneys*, 32 COLO. LAW. 27 (2003) (reprinting oath).

300. Nevada uses the following oath:

> I will support the Constitution and government of the United States and of the State of Nevada;
>
> I will maintain the respect due to courts of justice and judicial officers;
>
> I will support, abide by and follow the Rules of Professional Conduct as are now or may hereafter be adopted by the Supreme Court; and
>
> I will faithfully and honestly discharge the duties of an attorney at law to the best of my knowledge and ability.

B. MODERN FUNCTIONS OF LAWYER OATHS

In whatever form, the oath continues to have some regulatory and ethical functions but not to the degree that it once had. It no longer serves as the primary statement of ethics standards for lawyers. State rules of conduct, based on the ABA's *Model Rules*, have assumed that function. Instead, the oath serves other regulatory and ethical roles. The oath is an absolute condition on the right to practice law and is a basis for professional discipline. The oath also gives some ethical guidance by restating, in varying degrees, ethical concepts. The oath will never regain its central position as the source of ethical guidance and regulation, but it can more clearly and accurately state the core ethical duties of a lawyer. In that way, the oath can better inspire lawyers to live up to the ideals of the profession.

1. THE OATH AS A CONDITION OF PRACTICE

An important modern function of the oath is its condition on the right to practice law. Would-be lawyers cannot practice their profession without taking an oath. In most states, the legislature has mandated by statute that lawyers take the oath as a condition of their license.[302] In some states, the oath requirement is dictated by court rule.[303] Federal courts usually require, by court rule, that a lawyer take an oath before practicing in the court.[304]

The oath requirement distinguishes lawyers from many other professionals. States often require oaths for government office-holders,[305] jurors and witnesses,[306] but they do not usually require that other professionals take an oath. To the extent that other professions take oaths, even professionals subject to state licensing, the oath usually is a custom, not a legal mandate. For example,

---

NEV. SUP. CT. R. 73

301. A lawyer in Ohio swears allegiance and that "I will abide by the Code of Professional Responsibility," that "[i]n my capacity as an attorney and office of the Court, I will conduct myself with dignity and civility and show respect towards judges, court staff, clients, fellow professionals, and all other persons," and that "I will honestly, faithfully and competently discharge the duties of an attorney." OHIO GOV. BAR R. 1 § 8(A).

302. *See* IDAHO CODE ANN. § 3-102 (2006); MD. CODE ANN., [Bus. Occupations and Professions] § 10-212 (West 2006); MISS. CODE ANN. § 73-3-35 (2006); MONT. CODE ANN. § 37-61-207 (2006); N.C. GEN. STAT. § 84-1 (2006); N.D. CENT. CODE § 27-11-20 (2006); TEX. CODE ANN. § 82.037 (Vernon 2006).

303. *See* ARIZ. R. SUP. CT. 32(c)(3); HAW. SUP. CT. R. 1.5.

304. *E.g.*, Dist. Nebraska Local Rules 83.4(c) (providing for admission of attorneys who are licensed in a state upon a showing of good moral character and "upon his or her taking the prescribed oath").

305. *See* N.C. GEN. STAT. § 89C-4 (2006) (requiring "written oath or affirmation for faithful discharge of duties" of State Board of Examiners for Engineers and Surveyors).

306. *See* CONN. GEN. STAT. ANN. § 1-25 (West 2006) (setting forms of oath for members of the general assembly, executive and judicial officers, notaries, electors, attorneys, jurors, witnesses, interpreters, assessors, and other officials); KY. REV. STAT. ANN. § 228 (West 2006) (mandating oath for members of the general assembly, all officers and members of the bar); MINN. STAT. ANN. § 358.07 (West 2006) (setting forms of oath for grand jurors, petit jurors, officers attending juries, witnesses, interpreters, attorneys and affiants).

although most medical students take the Hippocratic oath at their graduation,[307] state medical licensing statutes typically do not require the oath as a condition of practice.[308]

The oath requirement grew out of the history and function of lawyers as advocates before courts. Most lawyers take the oath in a court; some statutes and rules require that the oath be taken in open court.[309] Oath-taking is a common occurrence in courts, but unlike jurors and witnesses who take oaths relating solely to their participation in judicial proceedings, lawyers take oaths regardless of whether they will practice in court. Although some oath requirements speak in terms of practice before particular courts—such as those set by federal courts—state licensing schemes require oaths of all lawyers who practice any sort of law.

Because the oath is a condition on the right to practice law, it seemingly should act as a basis for excluding persons from the profession. The ability of a state to deny a license to anyone who is unwilling or unable to take the oath, or an affirmation of similar content, raises some difficult constitutional questions.[310] The courts have addressed these issues primarily in connection with the element of the oath in which the lawyer must swear to support the laws of the United States and the licensing jurisdiction.

In *Ex Parte Garland*, the United States Supreme Court examined the post-Civil War loyalty oath that both Congress and the Court itself required of lawyers.[311] An Arkansas lawyer, who had been a member of the Confederate congress and who later received a presidential pardon, asked to be relieved from the requirements in the federal lawyer's oath that he swear that he had never borne arms or supported powers hostile to the United States.[312] The Court granted his request, holding that these oath clauses violated the federal constitution's prohibition against *ex post facto* laws.[313] The Court distinguished the last clause of the oath, which required the lawyer to swear that he "will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same."[314] That clause, according to the Court, was valid: it was "promissory only, and require[d] no

307. *See* Ott et al., *supra* note 15, at 379-80 (reporting that 135 surveyed medical schools administered an oath to their graduates, usually at commencement); *see also id.* (noting occasional practice in Canada of the provincial body giving oath to doctors).

308. *See, e.g.*, MD CODE ANN. § 14-307 (West 2006) (licensing requirements for physicians); TEXAS CODE ANN. § 155.002 (VERNON 2006) (standards for issuance of license to practice medicine).

309. *See* ME. REV. STAT. ANN. tit. 4, § 806 (2006); N.Y. JUD. CT. ACTS LAW § 466 (McKinney 2006).

310. *See generally* Ruth Bader Ginsburg, *Supreme Court Discourse on the Good Behavior of Lawyers: Leeway Within Limits*, 44 DRAKE L. REV. 183, 188 (1996); *see also* W. Bradley Wendel, *Free Speech for Lawyers*, 28 HASTINGS CONSTITUTIONAL L. Q. 305 (2001).

311. *Ex parte* Garland, 71 U.S. 333 (1866). The oath originally applied to officers of the federal government, and Congress extended it to lawyers practicing in federal court. *Id.* at 374.

312. *Id.* at 375.

313. *Id.* at 376-78.

314. *Id.* at 376.

consideration."[315]

In 1945, the Court in *In re Summers* clarified that a state may exclude an applicant from the bar if he in good faith cannot take the required oath to support the constitution.[316] There, the applicant was a conscientious objector to the war, and the Illinois constitution required service in the militia during time of war.[317] The Court held that although Illinois could not exclude applicants from the bar based solely on their religious beliefs, the state could require support of its laws and exclude those who could not take the oath in good faith.[318] Because Illinois' law regarding militia service was itself proper, Illinois could exclude applicants who could not sincerely swear to obey that law.[319]

In 1971, the Court in *Wadmond* upheld a New York state bar rule that required bar examiners to certify that the applicant "believes in the form of the government of the United States and is loyal to such government."[320] The Court reiterated that "there can be no doubt of [the] validity" of a lawyer's oath that "merely requires an applicant to swear or affirm that he will 'support the constitution of the United States' as well as that of the [licensing state]."[321] The rule as interpreted by the state bar "performs only the function of ascertaining that an applicant is not one who 'swears to an oath pro forma while declaring or manifesting his disagreement with or indifference to the oath.'"[322]

This doctrine has its limits, however. In *Bond v. Floyd*, the Court held unconstitutional Georgia's refusal to allow Julian Bond to take the oath as a state legislator, allegedly due to his anti-government statements in connection with the Vietnam War.[323] The Court stated that Bond's case was not "a case where a legislator swears to an oath *pro forma* while declaring or manifesting his disagreement with or indifference to the oath," and that the ability to question the oath in such *pro forma* cases "does not authorize the majority of state legislators to test the sincerity with which another duly elected legislator can swear to uphold the Constitution."[324]

In some recent high-profile cases, this doctrine has been applied to deny admission to persons who openly espoused racial bias and hatred. In 2000, the Rhode Island Supreme Court denied admission to an applicant based in part on that court's view that the applicant could not abide by the terms of the Rhode

315. *Id.*

316. *In re* Summers, 325 U.S. 561, 573 (1945).

317. *Id.* at 562.

318. *Cf. id.* at 569-73.

319. *Id.* at 571-73.

320. *Id.* at 161.

321. Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154, 161 (1971).

322. *Id.* at 163-64 (quoting Bond v. Floyd, 385 U.S. 116, 132 (1966)). *See also* Hale Opinion, *infra* note 329, at 1040-42 (citing *Bond* and *Wadmond* and questioning whether its doubts as to Hale's sincerity regarding the oath "might be a frail reed upon which to deny certification").

323. Bond v. Floyd, 385 U.S. 116 (1966).

324. *Id.* at 132.

Island "do no falsehood" oath.[325] The applicant, Roger Roots, had engaged in prior criminal conduct involving falsehoods, and he published a number of articles expressing racial bias and contempt for the federal government.[326] Roots claimed that he could take the oath and abide by its terms.[327] The court noted that it could not deny admission due to unorthodox political beliefs, but that the combination of Roots' criminal record and his writings "casts such doubt upon the sincerity of Roots' professed willingness to abide by the terms of the oath that he must take as a member of the bar of this state that his application should be denied at this time."[328]

The most notorious case was that of Matt Hale.[329] Hale was an avowed racist and founder of a white supremacist organization.[330] The Illinois bar denied Hale admission in 1998.[331] The Illinois Bar Committee on Character and Fitness refused to certify Hale, in part due to its conclusion that Hale could not abide by an Illinois rule of conduct barring racial discrimination by lawyers.[332] The oath played a part in this process. As in *Roots*, Hale argued that he could take the oath and abide by its terms, but the bar did not accept his argument.[333]

---

325. *In re* Roots, 762 A.2d 1161, 1168-70 (R.I. 2000).

326. *Id.* at 1164-65, 1168-69.

327. *Id.* at 1170.

328. *Id.*

329. *See* GEOFFREY HAZARD, ET AL., THE LAW AND ETHICS OF LAWYERING 1037 (4th ed. 2005) (reprinting the Opinion of the Inquiry Panel of the Committee on Character and Fitness for the Third Appellate District of the Supreme Court of Illinois) [hereinafter Hale Opinion]. The Hale case has been the subject of extensive academic commentary. *See* Carla D. Pratt, *Should Klansmen be Lawyers? Racism as an Ethical Barrier to the Legal Profession*, 30 FLA. ST. U. L. REV. 857 (2003); Wendel, *supra* note 310, at 55; Richard L. Sloane, Note, *Barbarians at the Gates: Revisiting the Case of Matthew F. Hale to Reaffirm that Character and Fitness Evaluations Appropriately Preclude Racists From the Practice of Law*, 15 GEO. J. LEGAL ETHICS 397 (2002).

330. Hale Opinion, *supra* note 329, at 1037-38.

331. The Illinois inquiry panel refused to certify Hale, and the hearing panel affirmed. Hale sought but was denied review in both the Illinois Supreme Court and United States Supreme Court. He failed again in federal district court. *Id.* at 1046-47.

332. *Id.* at 1039 (quoting Rule 8.4(a)(5): "a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin").

333. The committee reported:

> Mr. Hale was asked whether or not he could take the oath to support the United States Constitution and the Constitution of the State of Illinois in good conscience. He unhesitatingly answered that he would have no difficulty even though, based on his beliefs, he obviously would be in substantial disagreement with current interpretations of the constitutions. He likened his situation to that of a judge or jury whose duty it is to follow the law even though they may disagree with it.

Id. at 1038. The majority panel questioned whether it could base denial merely on a finding that Hale was insincere in his statements that he could take and abide by the oath, but it found lack of fitness on more general grounds. *Id.* at 1141-42. A dissenting panelist and academic commentators, however, characterized the majority's decision as a rejection of the sincerity of Hale's offer to take the oath. *See id.* at 1045 (dissent); Avi Brisman, Note, *Rethinking the Case of Matthew F. Hale: Fear and Loathing on the Part of the Illinois Bar Commission on Character and Fitness*, 35 CONN. L. REV. 1399 (2003) (arguing that the Hale denial improperly amounted to dual requirements that the applicant take the oath and that the character and fitness committee corroborate the oath).

In *Garland* and *Summers*, the lawyers could not take the oath, and they raised constitutional challenges to the oath. In *Roots* and *Hale*, however, the applicants insisted that they could take and abide by the oath, but the state rejected the offers on the ground that the applicants could not take the oath in good faith. The states in essence found a violation of the oath before the oath was ever taken. *Roots* and *Hale*, however, are rare cases, for the states have limited latitude to anticipate violation of the oath.[334] Nevertheless, the oath can be used to exclude an applicant.

2. THE OATH AS A BASIS FOR LAWYER DISCIPLINE

In most cases, the licensing jurisdiction does not anticipate breach of the oath before the lawyer takes the oath. Instead, states or courts provide for discipline of lawyers who later violate their oaths. Many states provide by statute for disbarment or other penalty upon violation of the oath.[335] Some states have court or professional conduct rules that declare violation of the oath to be professional misconduct.[336]

Not all states have an express provision for discipline upon violation of the oath. Even without such a statute or rule directive, courts likely have inherent powers to punish lawyers who violate their oath. In 1997, in *Dineen*, the Maine Supreme Judicial Court held that Maine's oath (traditional "do no falsehood" oath) was an appropriate basis for discipline.[337] There, the disciplinary charges against lawyer Dineen listed a number of rules of the Maine Bar Association, and Dineen challenged the charges on the ground that the Supreme Judicial Court had not yet adopted the bar rules.[338] The court rejected this challenge, stating that the disciplinary rules were guidelines that may be properly consulted in assessing whether a lawyer had violated the oath.[339] More importantly, the court observed that the presiding justice had "expressly based each finding of misconduct in this case on language contained in the Attorney's Oath, thereby in effect applying . . . the standard appellant had sworn to uphold when he was admitted to practice."[340]

In most modern disciplinary cases, however, if the oath is used at all, it is used only as an afterthought. The oath itself is not the trigger for punishment or discipline of the attorney. This is in large part due to the fact that modern rules of professional conduct cover most conduct proscribed by the oath and do so in far

---

334. *See* Hale Opinion, *supra* note 329, at 1041-42 (citing *Bond* and *Wadmond* and questioning whether its doubts as to Hale's sincerity regarding the oath "might be a frail reed upon which to deny certification").

335. *See* MINN. STAT. § 481.15 (2006); MONT. CODE ANN. § 37-61-3012)(b) (2006).

336. *See* S.C. APP. CT. R. 413,7(a) (6). In 2008, the Arizona Supreme Court amended its rules to define professional misconduct as "substantial or repeated violations" of the oath. ARIZ. R. SUP. CT. 31(a) 2.E.

337. *In re* Dineen, 380 A.2d 603 (Me. 1977).

338. *Id.* at 603-04.

339. *Id.* at 604.

340. *Id.*

more detail. Courts do not need to resort to the oath when the rules more directly address the conduct at issue. To the extent that courts or disciplinary bodies cite the oath as grounds for attorney discipline, the court usually notes the oath generally, as further support for discipline, after it has cited particular conduct rules that the lawyer has violated.

Nevertheless, the oath sometimes imposes a duty distinct from that imposed under the rules of conduct. For example, Wisconsin has held that the "offensive personality" clause of its version of the ABA oath is an appropriate basis for attorney discipline, and it has relied solely on the clause to discipline a lawyer.[341] South Carolina recently replaced its version of the "offensive personality" clause with a civility duty, and at the same time, it expressly made violation of the revised oath a basis for discipline.[342] Moreover, as discussed below, some current oaths retain duties, such as the "just" causes duty, that are not part of the *Model Rules*.[343] In sum, although the oath rarely is used in disciplinary cases, its violation is a possible basis for discipline.

3. THE OATH AS ETHICAL INSPIRATION AND GUIDANCE

The oath can serve non-regulatory functions. Even the simple oath can prompt ethical reflection, as the actual act of taking the oath is a moment of high ethical aspiration. By reciting the oath, the lawyer both is reminded of his or her core ethical duties (in varying degrees of detail, depending on the form of oath), and promises to abide by those principles. The solemnity of the oath ceremony—often a promise made to God, in a courtroom, before a judge, and before one's peers and family[344]—underscores the importance of the lawyer's ethical commitment.

Scholars and bar associations also use the oath to highlight and convey ethical concepts. The oath is a common theme in ethical and political discussions.[345] The

---

341. *In re* Beavers, 510 N.W.2d 129, 133 (Wis. 1994) (collecting cases). In *Beavers*, the Wisconsin Supreme Court upheld discipline against an attorney who threatened to kill an adverse party and struck the man's car with his own vehicle. The court held that this behavior constituted "offensive personality" in violation of the oath and warranted a 90-day suspension of his license. *Id.* at 131-32, nn.2-3 (noting that finding of misconduct was not based on other rules but instead the oath). *See also* Matter of Disciplinary Proceedings Against Blask, 573 N.W.2d 835 (Wis. 1998) (applying "offensive personality" clause to reprimand a lawyer who attacked a basketball referee, using profane language, and later lied to police).

342. *See supra* note 272. 23 A.B.A. J. E-REPORT 4 (2005) (reporting modification of South Carolina oath and disciplinary rules). Others have argued against civility oaths. *See* Atkinson, *supra* note 270.

343. *See infra* notes 352-357.

344. *See* Martha Sheehy, 23 MONT. LAW. 4 (Nov. 1977) (describing oath ceremony in Montana: 100 lawyers took the oath before the Montana Supreme Court in the state capital, and many practicing lawyers moved for individual admission of their family and friends).

345. *See* Donald J. Rendall, *The President's Column*, 29 VT. B. J. 3 (Fall 2003) (noting oath and other distinguishing features of the legal profession); Reginald Turner, *"True Justice:" The Access to Justice 2002 Campaign*, 81 MICH. B. J.11 (Dec. 2002) (citing lawyer's oath in support of pro bono program); William Melton, *The Oaths of Alabama Attorneys* (May 19, 2005) (on file with author) (speech to Alabama State Bar

president of the Michigan Bar Association recently urged lawyers to more closely follow the vows of their oath in order to avoid further regulation of the profession by the legislature.[346] The president of the Alabama Bar Association urged lawyers to remember their ("do no falsehood") oath and uphold "America's legal tradition and Rule of Law."[347] Another argued that the oath required lawyers to support an independent judiciary in the face of increasing political attacks on the judiciary.[348]

A frequent reference in this ethical discourse is to the public service clause of the Swiss oath and ABA model oath. Many have used this clause to encourage lawyers to take on pro bono and other public service work.[349] The Idaho State Bar Association, for example, in 1993 adopted a resolution that cited the oath and encouraged all lawyers to donate their services to the Idaho Volunteer Lawyers Program.[350] Professor Kuehn in a series of articles has argued that the oath clause reflects and reinforces the lawyer's duty of public service in a variety of situations, including lawyers' duties to support law school clinics and law

---

Association Leadership Forum encouraging lawyers to read and think about their oath: "You will be a better lawyer in the true sense of the word"); Dale Doerhoff, *Dialogue on Justice: "What do Lawyers Do?" (Part II)*, 58 J. MO. B. 330, 330 (Nov-Dec. 2002) (analyzing Missouri oath and arguing that it distinguishes the legal profession "from all others," reflects the special status of lawyers as officers of the court and confirms that lawyers practice with a "social conscience"); Wendell K. Smith, *Why We Take An Oath*, 8 Utah B. J. 12 (Jan. 1995) (analyzing the Utah oath line-by-line and concluding: "[T]he practice of law is not just another service industry, it involves the public trust, the preservation of society, and the administration of justice. That is why we took this oath").

346. *See* Scott S. Brinkmeyer, *Lest We Forget*, 83 MICH. B. J. 11, 14 (Mar. 2004) ("If each and every lawyer would honor [the] oath, there would not be any need for further lawyer regulation.").

347. Douglas McElvy, President's Page, *No Greater Gift*, 66 ALA. LAW. 252, 256 (July 2005).

348. D. Michael Guerin, *Why an Independent Judiciary?*, 78 WIS. LAW. 5 (Oct. 2005) (noting attacks on judiciary and popular criticism after Terri Schiavo case and arguing that the lawyer's oath clause to "maintain the respect due to the courts of justice and judicial officers" reflects obligation to stand up for the integrity of the judicial system).

349. *See* Dennis Archer, *Keynote Address: Why is Accountability Important?*, 54 S.C. L. REV. 881, 887 (2002) (ABA President-Elect speech, stating that "outside of those who are in a religious profession . . . . we're the only ones . . . that take an oath to represent the oppressed and the defenseless"); Barbara Glesner Fines, *Almost Pro Bono: Judicial Appointments of Attorneys in Juvenile and Child Dependency Actions*, 72 U.M.K.C. L. REV. 337 (2003) (citing state versions of oath and Field Code duties as directives in support of pro bono work in family court); J. Thomas Greene, *Advice to Old and New Lawyers*, 173 F.R.D. 328 (1996) (judge recalling oath that he took in 1955, which "required that the cause of the defenseless and oppressed may not be rejected because of considerations of lucre," noting that the duty is "unstated in the current oath" and arguing that all law firms should continue encourage and give credit for pro bono work); Thomas Hagerman, *The Staying Power of My Legal Services Experience*, 30 COL. LAW. 29, 30 (Dec. 2001) (quoting oath and stating that lawyers should meet minimum suggested hours of pro bono service and "encourage our colleagues to do the same, as well as acknowledge warmly those who meet or exceed this goal"); Bill Piatt, *One View to Add to the Many*, 34 TOL. L. REV. 143, 144 (2002) (noting that law professors, as lawyers who take oaths, have an obligation to teach "students an appreciation for our laws and our system of justice," and, as reflected by New Mexico's oath, an obligation of public service); Carolyn R. Young, *The Karma of Pro Bono*, 29 L.A. LAW. 76, 76 (Aug. 2006) (arguing that "despite that [. . .] obligation, we lawyers overwhelmingly neglect our duties by failing to adequately serve the defenseless and oppressed").

350. Idaho State Bar Association, *Resolution 91-11, Participation in Pro Bono Activities*, 36 ADVOCATE (Idaho) 13 (Nov. 1993).

professors' duty to speak out.[351]

C. A CRITIQUE OF MODERN OATH PRACTICE

Although oaths can perform both regulatory and ethical functions, they are not used to their full advantage. For too long, the oaths have existed in the shadow of the modern rules of professional conduct. The concept of the oath remains viable, but the oath can better serve its regulatory and ethical functions. To do so, the oath must accurately and clearly state core ethical duties, whether in detailed or simple form. A few oaths fail this aim by stating duties inconsistent with other obligations, by using confusing language or by not stating balanced, core concepts of the profession.

First, some oaths state duties that differ from the standards in the rules of professional conduct. This problem is limited in the sense that only a very few clauses of the oath are inconsistent with other regulatory standards, but pervasive in that many states have such an oath. The best example is the "just" causes duty, which a number of states still retain in various forms.[352] The ABA in 1977 deleted this duty from the model oath, in response to criticism that the clause both misstated a lawyer's duty and imposed a higher duty on plaintiffs' lawyers than on civil defense lawyers.[353] The *Model Rules* do not require lawyers to assess the justness of their client's cause. Model Rule 3.1 states an objective standard for all civil papers,[354] which tracks the objective standard in Rule 11 of the Federal Rules of Civil Procedure.[355] Pleas in criminal cases are given even more leeway.[356] Rules ban ill purposes, such as harassment, [357] but they do not require

---

351. Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 1971, 2007 (2003) [hereinafter *Ethics Critique*] (citing oath and arguing that lawyers' efforts to interfere with law school clinics "could be viewed at an attempt to induce a violation of a clinic attorney's ethical responsibilities"); Robert R. Kuehn, *A Normative Analysis of the Rights and Duties of Law Professors to Speak Out*, 55 S. C. L. REV. 253, 274 (2003) (citing oath in support of argument that law professors, as lawyers, have a duty to "speak out" and "lend their time and civil influence to assure the availability of legal services and to advance law reform"). *See also* Robert R. Kuehn, *Undermining Justice: The Legal Profession's Role in Restricting Access to Legal Representation*, 2006 UTAH L. REV. 1039 (2007).

352. *See supra* notes 273-276 (reporting states).

353. *See supra* notes 251-254 (1977 amendment of model oath).

354. "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." MODEL RULES OF PROFESSIONAL CONDUCT, R. 3.1 (2006) [hereinafter MODEL RULES].

355. FED. R. CIV. P. 11(b) (imposing a "reasonable inquiry" standard and requiring that the lawyer certify that the civil paper have "evidentiary support" and be "warranted by existing law or by a nonfrivolous argument" for change in the law).

356. Model Rule 3.1 imposes a "frivolous" standard but adds: "A lawyer for the defendant in a criminal proceeding . . . may nevertheless so defend the proceeding as to require that every element of the case be established." MODEL RULES, R.3.1.

357. *See supra* note 355 (improper purpose clause of Rule 11). *See also* Carol Rice Andrews, *Jones v. Clinton: A Study in Politically Motivated Suits, Rule 11, and the First Amendment*, 2001 BYU L. REV. 1, 84-96 (2001) (studying the improper purpose clause of Rule 11(b)(1) and arguing that the clause may violate the

the lawyer to assess the overall justness of the client's cause. Thus, the oath statements of a "just" causes duty are confusing (and perhaps incorrect) statements of the duties of a lawyer in litigation.

Another possible deviation is the public service clause of the Swiss and ABA oaths, in which the lawyer swears to "never reject, for any consideration personal to myself, the cause of the defenseless or oppressed." Some academic commentators, such as Professor Kuehn, argue that this oath duty is broader than the public service provisions of the *Model Rules* in that the oath speaks in mandatory, rather than aspirational, terms.[358] Courts have not sanctioned attorneys under this provision of the oath,[359] and to the extent that the oath's public service clause suggests a different duty than the rules of conduct, that difference may not be deliberate.[360] The ABA has long debated the public service obligations of lawyers, and it concluded in Model Rule 6.1 that such work is not mandatory.[361] Indeed, Professors Gillers and Simon report that "[n]o state yet requires lawyers to perform pro bono work, and no state is actively considering mandatory pro bono."[362]

Although courts rarely, if ever, discipline lawyers based on the oath alone, ethics authorities and disciplinary bodies should consider whether they intend the oath to state duties that are different than other standards governing lawyer conduct. Deviation from the ABA *Model Rules* is not the problem. States often amend their versions of ABA model standards, but these variations usually are

---

plaintiff's right of court access under the First Amendment right to petition); Carol Rice Andrews, *The First Amendment Problem with the Motive Restrictions in the Rules of Professional Conduct*, 24 J. LEGAL PROF. 13, 64-71 (2000) (arguing that the Model Rules contain motive restrictions, rather than mere objective standards, and that such restrictions, when applied to court access, might violate the plaintiff's First Amendment right to petition).

358. Kuehn & Joy, *Ethics Critique*, *supra* note 351, at 2007 (noting the aspirational "should" character of the duties in the Model Rules and Model Code but arguing that the oath may provide a disciplinary basis regarding public service).

359. *Id.* (stating that "there is no reported case of an attorney being sanctioned for failing to uphold" the public service clause of the oath, but that where "the motive for denying representation is apparent" such conduct may be subject to disciplinary action). *But see* Bradshaw v. U.S. Dist. Court for the S. Dist. of Cal., 742 F.2d 515, 518-19, n.5 (9th Cir. 1984) (questioning whether the reaction of the trial court and local bar to pleas for assistance of counsel violated California's code duty to "never reject" the cause of the defenseless).

360. Some states have given attention to the oath vow, as evidenced by recent amendments. South Carolina's oath states that the lawyer "will assist the defenseless or oppressed byensuring that justice is available to all citizens . . ." S.C. App. R., Rule 402(k). Alaska's oath states only that the lawyer "will strive to improve both the law and the administration of justice." *See infra* note 372 (reprinting Alaska oath). The Idaho oath adds a vow to "conduct time and resources to public service." *See supra* note 271. Michigan simplifies the wording of the clause: "I will not, for personal reasons, reject the cause of the defenseless or oppressed." *See supra* note 267. *See also* Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33,81, 123 (2000) (noting and criticizing removal of the public service duty from the Louisiana law student oath).

361. MODEL RULES, R. 6.1 ("Voluntary Pro Bono Publico Service") (2008). *See generally* Judith Maute, *Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations*, 77 TUL. L. REV. 91 (2002) (recounting historical pro bono standards and ongoing debate as to modern standards).

362. STEPHEN GILLERS & ROY SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS, *411* (2008).

deliberate. The jurisdiction intends to impose a standard different than the ABA standard. More importantly, when a jurisdiction modifies the rules of conduct, that modification not only is deliberate, it is consistent within the jurisdiction. It is the statement of ethical policy for that jurisdiction. The problem with the deviations in the oath is that it they are arguably inconsistent with the standards otherwise in effect in the same jurisdictions that require such oaths.

The differences in the oath or Field Code statement of duties seem to be "accidents of history," since the rules of conduct developed separately and more rapidly than the oath. This is most obvious with regard to the Field Code statutory duties, which statutes seem to have been largely ignored after initial state adoption over a century ago. This is not ideal, but the inconsistencies in the statutory duties present less of an ethical dilemma than those in the oath. A lawyer may never know of the statutes, but the oath is a literal promise spoken by the lawyer. The lawyer may appreciate that a particular vow will not subject him or her to professional discipline, but that undermines the value of the oath as a whole. A lawyer who disregards any portion of his oath may disregard the whole.[363]

A second problem is that some oaths use antiquated and confusing language. For example, both the Swiss and ABA model oaths require that lawyers "abstain from all offensive personality." This is not a well understood concept. The wording is so broad that the Ninth Circuit has declared it to be unconstitutionally vague.[364] Wisconsin and perhaps a few other states have narrowed the duty through judicial interpretation, but most states have not done so.[365] A similar criticism can be raised against the "lucre" language in both the ABA model oath and most forms of the "do no falsehood" oath. The ban on delays made for lucre is consistent with the prohibition in procedural rules, such as Rule 11, against filing civil papers for "any improper purpose."[366] Yet, the "lucre" language is at least unfamiliar (if not comical) to lawyers when they state it for the first time in the oath ceremony.

Finally, many oaths do not capture a fair balance of core ethical ideals. The old oaths have too much litigation focus. The profession has modernized over the centuries, and lawyers are no longer merely litigation advocates. This criticism

363. *See* Carol Rice Andrews, *Highway 101: Lessons in Legal Ethics That We Can Learn on the Road*, 15 GEO. J. LEGAL ETHICS 95, 107-12 (2001) (arguing that conduct rules that are flawed and ignored by lawyers and disciplinary authorities have negative consequences, particularly as to the underlying non-flawed aspects of the rules).

364. *In re* Wunsch, 84 F.3d 1110, 1119 (9th Cir.1996) (voiding the "offensive personality" proscription in California's statutory (Field Code) list of duties). California later deleted the clause from its statutory list of attorney duties. CALIFORNIA CODE § 6068.

365. *See* Janelle S. Mc Eachern, *Engaging in Offensive Personality as Ground for Disciplinary Action Against Attorneys*, 58 A.L.R. 5th 429 (collecting cases).

366. FED. R. CIV. P. 11(b)(1) (requiring the lawyer to certify that he or she has not filed the paper for "any improper purpose").

can be levied against other standards of conduct, but the *Model Rules* have made some progress and today address a broader range of lawyer activity.[367] Even as to generic issues, some oaths speak too narrowly. The ABA model oath, for example, states the duty to "accept no compensation in connection with his business except from him or with his knowledge and approval." At the time of its adoption, this narrow duty was criticized as addressing an "uncommon" issue, not one of "fundamental importance and general concern."[368] Nothing in the past century has made this vow any more central to the lives of lawyers. The aims of the oath would be better served by a general vow of client loyalty.

The problems of inconsistency, terminology and skewed focus apply largely to the detailed oaths. The simple oath avoids most of these problems by using (relatively) plain language to state a generic vow to either "faithfully discharge the duties of a lawyer" or "truly and honestly demean myself." Simplicity does not mean a better oath. An itemized oath that restates specific ethical goals better reinforces the core ideals of the profession. Over hundreds of years, society and the legal profession have set six core values of the profession—litigation fairness, competence, loyalty, confidentiality, reasonable fees and public service.[369] By not stating these standards, the simple oath misses the opportunity to highlight and remind the lawyer of core ideals at a crucial stage in the lawyer's career.

States should not abandon altogether the older forms of detailed oaths.[370] There is value in continuing the tradition of the old forms of oath. The old forms of oath are "rich" and "poetic," and the old language is "imbued of a feeling that this has been said by our fathers . . . through the history" of the bar.[371] The tradition promotes uniformity over time and place and thereby better connects lawyers to their profession.

Yet tradition should not be valued over lawyers' appreciation of the ethical obligations by which they swear to abide. The duties of the oath can and should be stated in a manner that is meaningful—in both terminology and substance—to the lawyer who takes the vows. Likewise, the oath should state duties that are consistent with the duties elsewhere imposed on the local bar. Both aims can be achieved in a manner that respects tradition. Some key vows in the old oath can and should be retained. The centuries-old vow to "do no falsehood," for example, is easily understood and has universal application to lawyers in their daily lives.

Some states are moving in the right direction. They have updated the language and the individual elements while keeping the basic tradition of the detailed

---

367. *See* Andrews, *supra* note 2, at 1445, n. 457, 1447, n. 473 & 1454-58 (discussing criticisms of litigation focus of ABA model compilations and efforts to address that concern).

368. *See supra* notes 220-221 (Baldwin criticism of narrow conflict duty in ABA model oath).

369. *See* Andrews, *supra* note 2 at 1387.

370. *See* George Hathaway, *A Plain English Lawyer's Oath*, 78 MICH. B.J. 64 (1999) (transcribing debate of Michigan State Bar Assembly as to plain language oath to replace retention of older oath).

371. *Id.* at 65-66 (quoting comments as to traditional form of oath).

oaths. This does not mean a rejection of the traditions of the profession. To the contrary, such refinement reinvigorates the oath and reaffirms its traditional place in the lives of lawyers.

A good example is the lawyers' oath in Alaska:

> I will support the Constitution of the United States and the Constitution of the State of Alaska;
>
> I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;
>
> I will maintain the respect due to courts of justice and judicial officers;
>
> I will not counsel or maintain any proceedings and I believe are taken in bad faith or any defense that I do not believe is honestly debatable under the law of the land;
>
> I will be truthful and honorable in the causes entrusted to me, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;
>
> I will maintain the confidences and preserve inviolate the secrets of my client, and will not accept compensation in connection with my client's business except from my client or with my client's knowledge or approval;
>
> I will be candid, fair, and courteous before the court and with other attorneys, and will advance no fact prejudicial to the honor or reputation of a party or witness, unless I am required to do so in order to obtain justice for my client;
>
> I will uphold the honor and maintain the dignity of the profession, and will strive to improve both the law and the administration of justice.[372]

The Alaska oath could be further improved—it still retains the overly narrow fee conflict duty and a litigation focus—but it is a step in the right direction.

Each jurisdiction should follow this example and examine its own oath. The aim is not simply to improve language. The more important aim is internal consistency. Each jurisdiction's oath must coincide with the standards of that jurisdiction.

Given this need for internal consistency, the ABA must proceed cautiously with the model oath, lest jurisdictions adopt the model without regard to their own rules of conduct. The ABA, however, could lead state reform efforts. The ABA should modify the current model oath to better state and reflect the current standards in the *Model Rules*. The ABA should not then mothball the model oath but instead should periodically review the oath to verify that it is consistent with the developing standards of the *Model Rules*.

Finally, courts and bar associations should consider revising the methodology of taking the oath. An oath might better serve its function if it is renewed. Some Medieval laws required that lawyers renew their oath every year.[373] Today, other

372. Alaska Court Rules, Rule 5.

373. *See supra* notes 30 (Frederic II 1221 oath) and 58 (1274 French oath).

licensed activity, such as driving, requires periodic renewal. Other persons, such as witnesses and jurors, must take an oath every time they serve. Elected and appointed public officials usually must take the oath upon each election or appointment. Most states already require continuing legal education after becoming a member of the bar. They should consider whether renewal of the oath also may serve their aims of enhanced professionalism. This could be done in a variety of ways. One might be a periodic renewal of the oath ceremony, as a condition on the right to practice. Another may be a more informal statement of the oath, by participating lawyers at state bar meetings or continuing legal education sessions.

V. CONCLUSION

The lawyer's oath is as old as the legal profession itself. The current oaths reflect that tradition. Every jurisdiction uses an oath modeled on one of the basic historic forms—the English "do no falsehood" oath, the English simple oath or the Swiss detailed oath. Indeed, most lawyers today utter substantially the same vows sworn by lawyers hundreds of years ago.

The oath always has served as a basis for ethical guidance and regulation. For many generations, it was the principal source of ethical guidance and debate. Even in the relatively recent past—late nineteenth century and early twentieth century America—the oath, particularly its "just" causes clause, served as a catalyst for ethical debate and development. In today's regulatory state, in which lawyers have scores of specific rules and statutes governing their conduct, the oath no longer is the focal point of ethical regulation and debate. Yet, the oath continues to serve some regulatory and ethical functions. The oath is regulatory in that it is a prerequisite to the practice of law, it can act to exclude persons from the profession, and it can serve as the basis for attorney discipline. The oath also can serve important ethical functions. The very solemnity of the oath can both inspire the lawyer and remind the lawyer of the central ethical precepts of his or her profession.

A few forms of oaths, however, undermine the oath's functions by clinging too much to the past. Tradition is both a virtue and a problem with current oath practice. Some of the old forms of oath state duties that are otherwise inconsistent with modern standards of conduct, many oaths state duties in antiquated language, and most detailed oaths are unduly skewed toward litigation. These problems cause oaths to be overlooked and underused as an ethical and regulatory tool. That is a lost opportunity. The oath can and should inspire lawyers as to both their essential ethical duties and their higher calling in their centuries-old profession.