



## Prosecution Function

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Criminal Justice Section Standards

## Prosecution Function

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### PART I.

#### GENERAL STANDARDS

#### Standard 3- 1.1 The Function of the Standards

These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of the prosecutor to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

#### Standard 3- 1.2 The Function of the Prosecutor

(a) The office of prosecutor is charged with responsibility for prosecutions in its jurisdiction.

(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.

(c) The duty of the prosecutor is to seek justice, not merely to convict.

(d) It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.

(e) It is the duty of the prosecutor to know and be guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law in the prosecutor's jurisdiction. The prosecutor should make use of the guidance

afforded by an advisory council of the kind described in standard 4-1.5.

### **Standard 3-1.3 Conflicts of Interest**

(a) A prosecutor should avoid a conflict of interest with respect to his or her official duties.

(b) A prosecutor should not represent a defendant in criminal proceedings in a jurisdiction where he or she is also employed as a prosecutor.

(c) A prosecutor should not, except as law may otherwise expressly permit, participate in a matter in which he or she participated personally and substantially while in private practice or nongovernmental employment unless under applicable law no one is, or by lawful delegation may be, authorized to act in the prosecutor's stead in the matter.

(d) A prosecutor who has formerly represented a client in a matter in private practice should not thereafter use information obtained from that representation to the disadvantage of the former client unless the rules of attorney-client confidentiality do not apply or the information has become generally known.

(e) A prosecutor should not, except as law may otherwise expressly permit, negotiate for private employment with any person who is involved as an accused or as an attorney or agent for an accused in a matter in which the prosecutor is participating personally and substantially.

(f) A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests.

(g) A prosecutor who is related to another lawyer as parent, child, sibling, or spouse should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. Nor should a prosecutor who has a significant personal or financial relationship with another lawyer participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer, unless the prosecutor's supervisor, if any, is informed and approves or unless there is no other prosecutor authorized to act in the prosecutor's stead.

(h) A prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses unless requested by the accused person or witness to make such a recommendation, and should not make a referral that is likely to create a conflict of interest. Nor should a prosecutor comment upon the reputation or abilities of defense counsel to an accused person or witness who is seeking or may seek such counsel's services unless requested by such person.

**Standard 3-1.4 Public Statements**

(a) A prosecutor should not make or authorize the making of an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the prosecutor knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding.

(b) A prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement that the prosecutor would be prohibited from making under this Standard.

**Standard 3-1.5 Duty to Respond to Misconduct**

(a) Where a prosecutor knows that another person associated with the prosecutor's office is engaged in action, intends to act or refuses to act in a manner that is a violation of a legal obligation to the prosecutor's office or a violation of law, the prosecutor should follow the policies of the prosecutor's office concerning such matters. If such policies are unavailing or do not exist, the prosecutor should ask the person to reconsider the action or inaction which is at issue if such a request is aptly timed to prevent such misconduct and is otherwise feasible. If such a request for reconsideration is unavailing, inapt or otherwise not feasible or if the seriousness of the matter so requires, the prosecutor should refer the matter to higher authority in the prosecutor's office, including, if warranted by the seriousness of the matter, referral to the chief prosecutor.

(b) If, despite the prosecutor's efforts in accordance with section

(a), the chief prosecutor insists upon action, or a refusal to act, that is clearly a violation of law, the prosecutor may take further remedial action, including revealing the information necessary to remedy this violation to other appropriate government officials not in the prosecutor's office.

**PART II.****ORGANIZATION OF THE PROSECUTION FUNCTION****Standard 3-2.1 Prosecution Authority to be Vested in a Public Official**

The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.

**Standard 3-2.2 Interrelationship of Prosecution Offices Within a State**

(a) Local authority and responsibility for prosecution is properly

vested in a district, county, or city attorney. Wherever possible, a unit of prosecution should be designed on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution.

(b) In some states, conditions such as geographical area and population may make it appropriate to create a statewide system of prosecution in which the state attorney general is the chief prosecutor and the local prosecutors are deputies.

(c) In all states, there should be coordination of the prosecution policies of local prosecution offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the state. A state association of prosecutors should be established in each state.

(d) To the extent needed, a central pool of supporting resources and personnel, including laboratories, investigators, accountants, special counsel, and other experts, should be maintained by the state government and should be available to assist all local prosecutors.

### **Standard 3- 2.3 Assuring High Standards of Professional Skill**

(a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.

(b) Wherever feasible, the offices of chief prosecutor and staff should be full-time occupations.

(c) Professional competence should be the basis for selection for prosecutorial office. Prosecutors should select their personnel without regard to partisan political influence.

(d) Special efforts should be made to recruit qualified women and members of minority groups for prosecutorial office.

(e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.

### **Standard 3- 2.4 Special Assistants, Investigative Resources, Experts**

(a) Funds should be provided to enable a prosecutor to appoint special assistants from among the trial bar experienced in criminal cases, as needed for the prosecution of a particular case or to assist generally.

(b) Funds should be provided to the prosecutor for the employment of a regular staff of professional investigative personnel and other necessary supporting personnel, under the prosecutor's direct control, to the extent warranted by the responsibilities and scope of the office; the prosecutor should also be provided with funds for the employment of qualified experts as needed for particular cases.

### **Standard 3- 2.5 Prosecutor's Handbook; Policy Guidelines and Procedures**

(a) Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient, and effective enforcement of the criminal law.

(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in an office handbook. This handbook should be available to the public, except for subject matters declared "confidential," when it is reasonably believed that public access to their contents would adversely affect the prosecution function.

### **Standard 3- 2.6 Training Programs**

Training programs should be established within the prosecutor's office for new personnel and for continuing education of the staff. Continuing education programs for prosecutors should be substantially expanded and public funds should be provided to enable prosecutors to attend such programs.

### **Standard 3- 2.7 Relations With Police**

(a) The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.

(b) The prosecutor should cooperate with police in providing the services of the prosecutor's staff to aid in training police in the performance of their function in accordance with law.

### **Standard 3- 2.8 Relations With the Courts and Bar**

(a) A prosecutor should not intentionally misrepresent matters of fact or law to the court.

(b) A prosecutor's duties necessarily involve frequent and regular official contacts with the judge or judges of the prosecutor's jurisdiction. In such contacts the prosecutor should carefully strive to preserve the appearance as well as the reality of the correct relationship which professional traditions, ethical codes, and applicable law require between advocates and judges.

(c) A prosecutor should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a

particular case which is or may come before the judge.

(d) A prosecutor should not fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecutor's position and not disclosed by defense counsel.

(e) A prosecutor should strive to develop good working relationships with defense counsel in order to facilitate the resolution of ethical problems. In particular, a prosecutor should assure defense counsel that if counsel finds it necessary to deliver physical items which may be relevant to a pending case or investigation to the prosecutor the prosecutor will not offer the fact of such delivery by defense counsel as evidence before a jury for purposes of establishing defense counsel's client's culpability. However, nothing in this Standard shall prevent a prosecutor from offering evidence of the fact of such delivery in a subsequent proceeding for the purpose of proving a crime or fraud in the delivery of the evidence.

### **Standard 3- 2.9 Prompt Disposition of Criminal Charges**

(a) A prosecutor should avoid unnecessary delay in the disposition of cases. A prosecutor should not fail to act with reasonable diligence and promptness in prosecuting an accused.

(b) A prosecutor should not intentionally use procedural devices for delay for which there is no legitimate basis.

(c) The prosecution function should be so organized and supported with staff and facilities as to enable it to dispose of all criminal charges promptly. The prosecutor should be punctual in attendance in court and in the submission of all motions, briefs, and other papers. The prosecutor should emphasize to all witnesses the importance of punctuality in attendance in court.

(d) A prosecutor should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.

(e) A prosecutor, without attempting to get more funding for additional staff, should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the interests of justice in the speedy disposition of charges, or may lead to the breach of professional obligations.

### **Standard 3- 2.10 Supercession and Substitution of Prosecutor**

(a) Procedures should be established by appropriate legislation to the end that the governor or other elected state official is empowered by law to suspend and supersede a local prosecutor upon making a public finding, after reasonable notice and hearing, that the prosecutor is incapable of fulfilling the duties of office.

(b) The governor or other elected official should be empowered by law to substitute special counsel in the place of the local prosecutor in a particular case, or category of cases, upon making a public finding that this is required for the protection of the public interest.

**Standard 3- 2.11 Literary or Media Agreements**

A prosecutor, prior to conclusion of all aspects of a matter, should not enter into any agreement or understanding by which the prosecutor acquires an interest in literary or media rights to a portrayal or account based in substantial part on information relating to that matter.

**PART III.**

**INVESTIGATION FOR PROSECUTION DECISION**

**Standard 3-3.1 Investigative Function of Prosecutor**

(a) A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

(b) A prosecutor should not invidiously discriminate against or in favor of any person on the basis of race, religion, sex, sexual preference, or ethnicity in exercising discretion to investigate or to prosecute. A prosecutor should not use other improper considerations in exercising such discretion.

(c) A prosecutor should not knowingly use illegal means to obtain evidence or to employ or instruct or encourage others to use such means.

(d) A prosecutor should not discourage or obstruct communication between prospective witnesses and defense counsel. A prosecutor should not advise any person or cause any person to be advised to decline to give to the defense information which such person has the right to give.

(e) A prosecutor should not secure the attendance of persons for interviews by use of any communication which has the appearance or color of a subpoena or similar judicial process unless the prosecutor is authorized by law to do so.

(f) A prosecutor should not promise not to prosecute for prospective criminal activity, except where such activity is part of an officially supervised investigative and enforcement program.

(g) Unless a prosecutor is prepared to forgo impeachment of a witness by the prosecutor's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case

in order to present the impeaching testimony, a prosecutor should avoid interviewing a prospective witness except in the presence of a third person.

### **Standard 3-3.2 Relations With Victims and Prospective Witnesses**

(a) A prosecutor should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for depositions pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and loss of income, provided there is no attempt to conceal the fact of reimbursement.

(b) A prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It is also proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution. However, a prosecutor should not so advise a witness for the purpose of influencing the witness in favor of or against testifying.

(c) The prosecutor should readily provide victims and witnesses who request it information about the status of cases in which they are interested.

(d) the prosecutor should seek to insure that victims and witnesses who may need protections against intimidation are advised of and afforded protections where feasible.

(e) The prosecutor should insure that victims and witnesses are given notice as soon as practicable of scheduling changes which will affect the victims' or witnesses' required attendance at judicial proceedings.

(f) The prosecutor should not require victims and witnesses to attend judicial proceedings unless their testimony is essential to the prosecution or is required by law. When their attendance is required, the prosecutor should seek to reduce to a minimum the time they must spend at the proceedings.

(g) The prosecutor should seek to insure that victims of serious crimes or their representatives are given timely notice of: (i) judicial proceedings relating to the victims' case; (ii) disposition of the case, including plea bargains, trial and sentencing; and (iii) any decision or action in the case which results in the accused's provisional or final release from custody.

(h) Where practical, the prosecutor should seek to insure that victims of serious crimes or their representatives are given an opportunity to consult with and to provide information to the prosecutor prior to the decision whether or not to prosecute, to



pursue a disposition by plea, or to dismiss the charges.

### **Standard 3-3.3 Relations With Expert Witnesses**

(a) A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the prosecutor should explain to the expert his or her role in the trial as an impartial expert called to aid the fact finders and the manner in which the examination of witnesses is conducted.

(b) A prosecutor should not pay an excessive fee for the purpose of influencing the expert's testimony or to fix the amount of the fee contingent upon the testimony the expert will give or the result in the case.

### **Standard 3-3.4 Decision to Charge**

(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

(b) Prosecutors should take reasonable care to ensure that investigators working at their direction or under their authority are adequately trained in the standards governing the issuance of arrest and search warrants and should inform investigators that they should seek the approval of a prosecutor in close or difficult cases.

(c) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted.

(d) Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required to present the complaint for prior approval to the prosecutor, and the prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury.

### **Standard 3-3.5 Relations with Grand Jury**

(a) Where the prosecutor is authorized to act as legal advisor to the grand jury, the prosecutor may appropriately explain the law and express an opinion on the legal significance of the evidence but should give due deference to its status as an independent legal body.

(b) The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.

(c) The prosecutor's communications and presentations to the grand jury should be on the record.

### **Standard 3-3.6 Quality and Scope of Evidence Before Grand**

## **Jury**

(a) A prosecutor should only make statements or arguments to the grand jury and only present evidence to the grand jury which the prosecutor believes is appropriate or authorized under law for presentation to the grand jury. In appropriate cases, the prosecutor may present witnesses to summarize admissible evidence available to the prosecutor which the prosecutor believes he or she will be able to present at trial. The prosecutor should also inform the grand jurors that they have the right to hear any available witnesses, including eyewitnesses.

(b) No prosecutor should knowingly fail to disclose to the grand jury evidence which tends to negate guilt or mitigate the offense.

(c) A prosecutor should recommend that the grand jury not indict if he or she believes the evidence presented does not warrant an indictment under governing law.

(d) If the prosecutor believes that a witness is a potential defendant, the prosecutor should not seek to compel the witness's testimony before the grand jury without informing the witness that he or she may be charged and that the witness should seek independent legal advice concerning his or her rights.

(e) The prosecutor should not compel the appearance of a witness before the grand jury whose activities are the subject of the inquiry if the witness states in advance that if called he or she will exercise the constitutional privilege not to testify, unless the prosecutor intends to judicially challenge the exercise of the privilege or to seek a grant of immunity according to the law.

(f) A prosecutor in presenting a case to a grand jury should not intentionally interfere with the independence of the grand jury, preempt a function of the grand jury, or abuse the processes of the grand jury.

(g) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury in order to obtain tangible, documentary or testimonial evidence to assist the prosecutor in preparation for trial of a defendant who has already been charged by indictment or information.

(h) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury for the purpose of aiding or assisting in any administrative inquiry.

### **Standard 3-3.7 Quality and Scope of Evidence for Information**

Where the prosecutor is empowered to charge by information, the prosecutor's decisions should be governed by the principles embodied in Standards 3-3.6 and 3-3.9, where applicable.

### **Standard 3-3.8 Discretion as to Noncriminal Disposition**

(a) The prosecutor should consider in appropriate cases the availability of noncriminal disposition, formal or informal, in deciding whether to press criminal charges which would otherwise be supported by probable cause; especially in the case of a first offender, the nature of the offense may warrant noncriminal disposition.

(b) Prosecutors should be familiar with the resources of social agencies which can assist in the evaluation of cases for diversion from the criminal process.

### **Standard 3-3.9 Discretion in the Charging Decision**

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

(i) the prosecutor's reasonable doubt that the accused is in fact guilty;

(ii) the extent of the harm caused by the offense;

(iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;

(iv) possible improper motives of a complainant;

(v) reluctance of the victim to testify;

(vi) cooperation of the accused in the apprehension or conviction of others; and

(vii) availability and likelihood of prosecution by another jurisdiction.

(c) A prosecutor should not be compelled by his or her supervisor to prosecute a case in which he or she has a reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions.

(e) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact

that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(f) The prosecutor should not bring or seek charges greater in number or degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense.

(g) The prosecutor should not condition a dismissal of charges, nolle prosequi, or similar action on the accused's relinquishment of the right to seek civil redress unless the accused has agreed to the action knowingly and intelligently, freely and voluntarily, and where such waiver is approved by the court.

### **Standard 3-3.10 Role in First Appearance and Preliminary Hearing**

(a) A prosecutor who is present at the first appearance (however denominated) of the accused before a judicial officer should not communicate with the accused unless a waiver of counsel has been entered, except for the purpose of aiding in obtaining counsel or in arranging for the pretrial release of the accused. A prosecutor should not fail to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

(b) The prosecutor should cooperate in good faith in arrangements for release under the prevailing system for pretrial release.

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

(d) The prosecutor should not seek a continuance solely for the purpose of mooting the preliminary hearing by securing an indictment.

(e) Except for good cause, the prosecutor should not seek delay in the preliminary hearing after an arrest has been made if the accused is in custody.

(f) The prosecutor should ordinarily be present at a preliminary hearing where such hearing is required by law.

### **Standard 3-3.11 Disclosure of Evidence by the Prosecutor**

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent

effort to comply with a legally proper discovery request.

(c) A prosecutor should not intentionally avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused.

#### **PART IV. PLEA DISCUSSIONS**

##### **Standard 3-4.1 Availability for Plea Discussions**

(a) The prosecutor should have and make known a general policy or willingness to consult with defense counsel concerning disposition of charges by plea.

(b) A prosecutor should not engage in plea discussions directly with an accused who is represented by defense counsel, except with defense counsel's approval. Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant, although, where feasible, a record of such discussions should be made and preserved.

(c) A prosecutor should not knowingly make false statements or representations as to fact or law in the course of plea discussions with defense counsel or the accused.

##### **Standard 3-4.2 Fulfillment of Plea Discussions**

(a) A prosecutor should not make any promise or commitment assuring a defendant or defense counsel that a court will impose a specific sentence or a suspension of sentence; a prosecutor may properly advise the defense what position will be taken concerning disposition.

(b) A prosecutor should not imply a greater power to influence the disposition of a case than is actually possessed.

(c) A prosecutor should not fail to comply with a plea agreement, unless a defendant fails to comply with a plea agreement or other extenuating circumstances are present.

##### **Standard 3-4.3 Record of Reasons for Nolle Prosequi Disposition**

Whenever felony criminal charges are dismissed by way of nolle prosequi (or its equivalent), the prosecutor should make a record of the reasons for the action.

#### **PART V. THE TRIAL**

##### **Standard 3-5.1 Calendar Control**

Control over the trial calendar should be vested in the court. The prosecuting attorney should advise the court of facts relevant in determining the order of cases on the court's calendar.

### **Standard 3-5.2 Courtroom Professionalism**

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, defendants, jurors, and others in the courtroom.

(b) When court is in session, the prosecutor should address the court, not opposing counsel, on all matters relating to the case.

(c) A prosecutor should comply promptly with all orders and directives of the court, but the prosecutor has a duty to have the record reflect adverse rulings or judicial conduct which the prosecutor considers prejudicial. The prosecutor has a right to make respectful requests for reconsideration of adverse rulings.

(d) Prosecutors should cooperate with courts and the organized bar in developing codes of professionalism for each jurisdiction.

### **Standard 3-5.3 Selection of Jurors**

(a) The prosecutor should prepare himself or herself prior to trial to discharge effectively the prosecution function in the selection of the jury and the exercise of challenges for cause and peremptory challenges.

(b) In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of the prosecutor should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

(c) The opportunity to question jurors personally should be used solely to obtain information for the intelligent exercise of challenges. A prosecutor should not intentionally use the voir dire to present factual matter which the prosecutor knows will not be admissible at trial or to argue the prosecution's case to the jury.

### **Standard 3-5.4 Relations With Jury**

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a

case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

### **Standard 3-5.5 Opening Statement**

The prosecutor's opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be tendered and admitted in evidence.

### **Standard 3-5.6 Presentation of Evidence**

(a) A prosecutor should not knowingly offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses, or fail to seek withdrawal thereof upon discovery of its falsity.

(b) A prosecutor should not knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

(c) A prosecutor should not permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration by the judge or jury until such time as a good faith tender of such evidence is made.

(d) A prosecutor should not tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When there is any substantial doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

### **Standard 3-5.7 Examination of Witnesses**

(a) The interrogation of all witnesses should be conducted fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily.

(b) The prosecutor's belief that the witness is telling the truth does not preclude cross-examination, but may affect the method and scope of cross-examination. A prosecutor should not use the power of cross-examination to discredit or undermine a witness if

the prosecutor knows the witness is testifying truthfully.

(c) A prosecutor should not call a witness in the presence of the jury who the prosecutor knows will claim a valid privilege not to testify.

(d) A prosecutor should not ask a question which implies the existence of a factual predicate for which a good faith belief is lacking.

#### **Standard 3-5.8 Argument to the Jury**

(a) In closing argument to the jury, the prosecutor may argue all reasonable inferences from evidence in the record. The prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw.

(b) The prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.

(c) The prosecutor should not make arguments calculated to appeal to the prejudices of the jury.

(d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence.

#### **Standard 3-5.9 Facts Outside the Record**

The prosecutor should not intentionally refer to or argue on the basis of facts outside the record whether at trial or on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

#### **Standard 3-5.10 Comments by Prosecutor After Verdict**

The prosecutor should not make public comments critical of a verdict, whether rendered by judge or jury.

## **PART VI. SENTENCING**

#### **Standard 3-6.1 Role in Sentencing**

(a) The prosecutor should not make the severity of sentences the index of his or her effectiveness. To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities.

(b) Where sentence is fixed by the court without jury participation, the prosecutor should be afforded the opportunity to address the court at sentencing and to offer a sentencing recommendation.



(c) Where sentence is fixed by the jury, the prosecutor should present evidence on the issue within the limits permitted in the jurisdiction, but the prosecutor should avoid introducing evidence bearing on sentence which will prejudice the jury's determination of the issue of guilt.

### **Standard 3-6.2 Information Relevant to Sentencing**

(a) The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence report. The prosecutor should disclose to the court any information in the prosecutor's files relevant to the sentence. If incompleteness or inaccuracy in the presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and to defense counsel.

(b) The prosecutor should disclose to the defense and to the court at or prior to the sentencing proceeding all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

This Standard may be available for purchase. Please visit the [Standards Ordering Information](#) page for details.

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