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## Human Rights and Lawyer's Oaths

Lauren E. Bartlett

*Saint Louis University School of Law*, [lauren.bartlett@slu.edu](mailto:lauren.bartlett@slu.edu)

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Human Rights and Lawyer's Oaths

Lauren E. Bartlett  
*Saint Louis University School of Law*

## Human Rights and Lawyer's Oaths

By Lauren E. Bartlett\*

\* Associate Clinical Professor of Law and Director of the Human Rights at Home Litigation Clinic at St. Louis University School of Law. Thank you to Chris Hegwood, Anezka Krobot, Khala Turner, Kristopher Lowe, Desirae Bedford, and Elizabeth Davenport for research assistance, and to Professor Yvette Liebesman for providing helpful feedback. I would also like to thank the participants at the January 2019 New Voices in Human Rights and International Law Session at AALS in New Orleans, my February 2021 presentation to the faculty of the University of Missouri-Kansas City School of Law, and the August 2022 International Legal Ethics Conference for helpful suggestions and critique on earlier drafts of this article.

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## Abstract

*Each lawyer in the United States must take an oath to be licensed to practice law. The first time a lawyer takes this oath is usually a momentous occasion in their career, marked by ceremony and celebration. Yet, many lawyer's oaths today are unremarkable and irrelevant to modern law practice at best, and at worst, inappropriate, discriminatory, and obsolete. Drawing on a fifty-state survey of lawyer's oaths in the United States, this article argues that it is past time to update lawyer's oaths in the United States and suggests drawing on human rights to make lawyer's oaths more accessible and impactful.*

Table of Contents

I. Introduction ..... 4

II. The Lawyer’s Oath: A Tool to Build a Dignified, Respectful and Inclusive Legal Profession  
..... 7

III. A Brief History of (and Impetus to Amend) Lawyer’s Oaths in the United States ..... 14

IV. Process and Enforceability Concerns for Amendments to Lawyer’s Oaths in the United  
States ..... 25

V. How to Use Human Rights Norms to Update Lawyer’s Oaths..... 30

VI. Proposed Human Rights Updates to Lawyer’s Oaths ..... 34

VII. Conclusion..... 42

Appendix A: Lawyer’s Oath Chart (50 States + Washington, D.C.) .....43

“Updating the lawyer’s oath is good for lawyers.” – Justice Beth Walker of the Supreme Court of Appeals for West Virginia<sup>1</sup>

## I. Introduction

A lawyer’s oath is a formal promise to observe the ethical and other obligations of the legal profession.<sup>2</sup> Each lawyer in the United States must swear or affirm a lawyer’s oath to be admitted to practice law.<sup>3</sup> The lawyer’s oath was, at one time, the principal source for ethical regulation of lawyers.<sup>4</sup> However, today lawyer’s oaths are only sometimes subject to enforcement in the United States.<sup>5</sup> In many states, taking a lawyer’s oath is merely a rite of passage, part of the ceremony marking the transition to licensed attorney.<sup>6</sup>

The language used in lawyer’s oaths varies greatly from state to state. Nearly all, but not all, lawyer’s oaths include a pledge to uphold the U.S. Constitution, as well as a pledge to uphold the applicable state constitution.<sup>7</sup> Only fourteen lawyer’s oaths reference the rules of

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<sup>1</sup> Supreme Court of Appeals State of West Virginia, Supreme Court Announces Addition of Civility Pledge to the Lawyer’s Oath (May 17, 2021), [http://www.courtswwv.gov/public-resources/press/releases/2021-releases/may17b\\_21.pdf](http://www.courtswwv.gov/public-resources/press/releases/2021-releases/may17b_21.pdf).

<sup>2</sup> See Geoffrey Hazard and Angelo Dondi, LEGAL ETHICS: A COMPARATIVE STUDY 60 (2004). The terms lawyer’s oath of office, oath of attorney, and oath of admission are used interchangeably by different states to describe the sworn or affirmed statement that a lawyer says upon admission to the bar of each state. See Carol Rice Andrews, *The Lawyer’s Oath: Both Ancient and Modern*, 22 GEO. J. LEGAL ETHICS 3, 4 (2009). For consistency purposes, this article refers to these type of oaths as “lawyer’s oaths”.

<sup>3</sup> See *The Lawyer’s Oath*, *supra* note 2 at 5.

<sup>4</sup> Hazard and Dondi, *supra* note 2 at 60; *The Lawyer’s Oath*, *supra* note 2 at 50.

<sup>5</sup> 28 states plus the District of Columbia discipline of attorneys for violating the lawyer’s oath. See Appendix A: Lawyer’s Oath Chart (50 States + Washington, D.C.). The American Bar Association’s Center for Professional Responsibility has compiled a list of state-based professional responsibility resources, including links to state rules of professional responsibility, ethics opinions, and more. See American Bar Association, Center for Professional Responsibility, Additional Legal Ethics and Professional Responsibility Resources, [https://www.americanbar.org/groups/professional\\_responsibility/resources/links\\_of\\_interest/](https://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest/). The ABA list does not include links to the state lawyer’s oaths.

<sup>6</sup> Devon Bombassei, *Child Abuse Disclosure by Lawyers: An “Agency-Capability” Approach*, 14 WASH. U. JURISPRUDENCE REV. 13, 16 (2021); *The Lawyer’s Oath*, *supra* note 2 at 50 (“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.”); Hazard and Dondi, *supra* note 2 at 60.

<sup>7</sup> The Connecticut, Maine, Massachusetts, New Hampshire and Vermont’s lawyer’s oaths do not include a pledge to uphold the U.S. Constitution, while all other state lawyer’s oaths, including the lawyer’s oath for the District of Columbia, do include such a pledge. See Appendix A; CONN. GEN. STAT. §1-25 (2012); ME. REV. STAT. tit. 4, §8C06 (1987); MASS. GEN. LAWS ch. 221, §38 (2017); N.H. REV. STAT. ANN. §311:6 (2013). See also Mary Elizabeth Basile, *Loyalty Testing for Attorneys: When is it Necessary and Who Should Decide?*, 30 CARDOZO L.

professional conduct.<sup>8</sup> A handful of lawyer’s oaths are very similar, if not identical, to the oaths of office taken by public officials, such as legislators or clerks of court.<sup>9</sup> Some oaths provide no ethical guidance whatsoever.<sup>10</sup> While the language of several states’ lawyer’s oaths has been updated in the last decade,<sup>11</sup> many still contain archaic terms not commonly used for over a hundred years.<sup>12</sup> A few lawyer’s oaths refer only to men,<sup>13</sup> and no lawyer’s oath in the United States refers to women.<sup>14</sup> In addition, no lawyer’s oath in the United States mentions anti-racism or requires a pledge of non-discrimination.<sup>15</sup>

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REV. 1843 (2009) (discussing the history of pledges of allegiance in lawyer’s oaths and arguing that those pledges underscore that lawyers are agents of the state and federal governments).

<sup>8</sup> Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Utah, and Washington’s lawyer’s oaths all include a pledge to uphold the applicable state rules of professional conduct. *See* Appendix A; AK. CT. R. 5; ARK. R. ADMIS. R. 7(G) (2017); ARIZ. SUP. CT. R. 41(H); CO. SUP. CT., Oath of Admission, <https://coloradosupremecourt.com/Current%20Lawyers/Oath.asp>; GA. CT. R. § 16; HAW. SUP. CT. R. 1.5; ID. CODE ANN. § 3-201; N.M. CT. R. 15-304; MO. SUP. CT. R. 8.15; MONT. CODE ANN. § 37-61-207; NEV. SUP. CT. R. 73; VT. STAT. ANN. TIT. XII, § 5812; OH. ST. GOVT. BAR R. 1, § 9; OR. lawyer’s oath, [www.osbar.org/\\_docs/admissions/forms/OathCOVID.pdf](http://www.osbar.org/_docs/admissions/forms/OathCOVID.pdf) (last visited Oct. 1, 2022); UT. R. PROF’L CONDUCT, Preamble; WASH. REV. CODE ANN. § 2.48.210. In addition, the Michigan lawyer’s oath states “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.” This is not a direct cite to the “rules of professional conduct”, but it seems to do so in effect. *See* MI. R. BAR R. 15, §3.

<sup>9</sup> The Kentucky, New Jersey, North Dakota, and Tennessee’s lawyer’s oaths are identical to oaths taken by judges and other public officials in those states. *See* Appendix; KY. CONST. §228 (1891); N.J. REV. STAT. §41:1-2 (2013); N.D. CENT. CODE §27-11-20 (2016); N.D. CONST. ART. XI §4; TENN. SUP. CT. R. § 6(4) (2019). Nebraska and Illinois only require support for both the state and federal constitutions, as well as the faithful discharge of the duties of an attorney “to the best of my ability.” *See* NEB. SUP. CT. R. CH. 3, ART. I, §3-128; 705 ILL. COMP. STAT. 205/4.

<sup>10</sup> This is true in Illinois, Maryland, North Dakota, Nebraska, New York, Tennessee, West Virginia, and Wyoming. *See* Appendix A; IL., *supra* note 9; MD. CODE ANN., BUS. OCC. & PROF. § 10-212; N.D., *supra* note 9; NE., *supra* note 9; N.Y. CONST. ART. XIII, § 1; TN., *supra* note 9; W.VA. R. ADMIS. PRAC. LAW. 7.0; WY. RULES OF ADMIS. R. 504.

<sup>11</sup> *See e.g.*, CA. R. CT. § 9.7 (2022); CA. BUS. & PROF. CODE § 6067 (2020), <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath>; TN., *supra* note 9; W.V., *supra* note 10.

<sup>12</sup> *See e.g.*, KY., *supra* note 9.

<sup>13</sup> The lawyer’s oaths in Maine, Massachusetts, and Rhode Island require “delaying no man” or “delay no man’s cause”. *See* ME., *supra* note 7; MASS., *supra* note 7; R.I. SUP. CT. R., ART. II, R. 8.

<sup>14</sup> *See* Appendix A; Jared A. Picchi, *Massachusetts Attorney’s Oath: History that Should Never Be Repeated*, 13 U. MASS. L. REV. 306 (2018). Texas recently amended its lawyer’s oath to take out gender-specific pronouns. *See* Angela Morris, *Practicing Lawyers Invited to Take New Oath with New Lawyers*, TEX. LAW. (Nov. 13, 2015), <https://www.law.com/texaslawyer/almID/1202742430575/> (providing a recent example of a state legislature purposefully removing gender-specific pronouns from its lawyer’s oath).

<sup>15</sup> No lawyer’s oath in the United States currently mentions “discrimination” or even “equality.” *See* Appendix A. This is surprising given the movement by state courts and bar associations to enact anti-discrimination rules. *See also* National Center for State Courts, State court statements on racial justice, <https://www.ncsc.org/newsroom/state-court-statements-on-racial-justice>; National Conference of Women’s Bar Associations, Status of Antidiscrimination Rules in Each State, <https://ncwba.org/resources/diversityrules/status-of-antidiscrimination-rules-in-each-state/>.

While the history of lawyer's oaths has been examined by legal scholars, few have compared the language included in lawyer's oaths throughout the United States.<sup>16</sup> In addition, there is a dearth of scholarship on the enforceability of lawyer's oaths for attorney disciplinary purposes, as well as how lawyer's oaths are enacted and amended state-by-state. Given that other admissions requirements for the practice of law in the United States are changing rapidly, such as the rise of the Uniform Bar Exam,<sup>17</sup> additional attention should be given to the tradition of lawyer's oaths.

This article argues that lawyer's oaths may be a tool for building a dignified, respectful, and inclusive legal profession. However, to make lawyer's oaths impactful and accessible, the unremarkable, irrelevant, inappropriate, discriminatory, and obsolete language in lawyer's oaths needs to be removed and replaced by ethical guidance and aspiration, which, as this article suggests, may be drawn from human rights norms. The model oath language and practical guidance in this article are meant to encourage and assist states to amend and update lawyer's oaths.

Part II of this article discusses a variety of theories regarding the purpose and function of the lawyer's oath, concluding that lawyer's oaths may be useful as a tool to build a dignified, respectful, and inclusive legal profession. Part III examines the checkered past of lawyer's oaths, comparing language used in lawyer's oaths across the United States. Part IV discusses how U.S. lawyer's oaths are enacted and amended, as well as whether lawyer's oaths are enforced for attorney disciplinary purposes. Part V suggests drawing on human rights norms for amendments to make lawyer's oaths more accessible and impactful. Part VI provides models for incorporating human rights norms into lawyer's oaths. This article concludes that it is past time to update

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<sup>16</sup> See Section III, *infra*.

<sup>17</sup> See Uniform Bar Exam, National Conference of Bar Examiners, <https://www.ncbex.org/exams/ube/>.



lawyer's oaths. When considering updates to lawyer's oaths, the focus should be on simple, direct, and modern language. In addition, ethical aspiration and guidance, which may be drawn from human rights norms, should also be included.

## II. The Lawyer's Oath: A Tool to Build a Dignified, Respectful and Inclusive Legal Profession

A central premise of this article is that lawyer's oaths are an important tool to help build a dignified, respectful, and inclusive legal profession. Yet, there is a dearth of recent scholarship on lawyer's oaths and not much on oaths in general.<sup>18</sup> With such an apparent lack of scholarly interest in the lawyer's oath, questions emerge as to the function, purpose, and value of the lawyer's oath today: why require lawyers to take an oath at all and what outcomes can be hoped for in administering a lawyer's oath? This section attempts to address those questions through an examination of the various theories put forth explaining the function, purpose, or value of oaths.

Scholars have differed greatly in their theories.<sup>19</sup> Some scholars focus on the function of oaths as promoting ethical guidance and moral aspiration.<sup>20</sup> Others have focused on the public nature of oath-taking and have argued that the public ceremony of the oath serves an important purpose, especially for lawyers as public citizens with duties towards the public good.<sup>21</sup> In

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<sup>18</sup> See *The Lawyer's Oath*, *supra* note 2 at 57 ("For too long, the oaths have existed in the shadow of the modern rules of professional conduct."); Matthew A. Pauley, I DO SOLEMNLY SWEAR: THE PRESIDENT'S CONSTITUTIONAL OATH: ITS MEANING AND IMPORTANCE IN THE HISTORY OF OATHS 4 (1999) ("...scholarly interest in the President's oath...has never been consistently great. And in recent years, such interest appears to have reached an all-time low."); Herbert J. Schlesinger, PROMISES, OATHS, AND VOWS: ON THE PSYCHOLOGY OF PROMISING 4 (2008) ("...promise keeping...has been totally ignored as a focus of systematic study by psychologists."). See also JONATHAN E. SOEHARNO, THE VALUE OF THE OATH (2020) (examining the value of oath and oath-taking from ancient to modern times).

<sup>19</sup> See *The Lawyer's Oath*, *supra* note 2 at 62.

<sup>20</sup> See *The Lawyer's Oath*, *supra* note 2 at 62 ("The oath can and should inspire lawyers as to both their essential ethical duties and their higher calling in their centuries-old profession."); SOEHARNO, *supra* note 18 at 40-42 (focusing on desires for justice, credibility, and social cohesion as the value of an oath); Lauren E. Bartlett, *A Human Rights Code of Conduct: Ambitious Moral Aspiration for a Public Interest Law Office or Law Clinic*, 91 ST. JOHN'S L. REV. 559, 568 (2017).

<sup>21</sup> See e.g., *The Lawyer's Oath*, *supra* note 2 at 62; Irma S. Russell, *Introduction—21<sup>st</sup> Century Law, Technology, and Ethics: The Lawyer's Role as a Public Citizen*, 35 U. MEM. L. REV. 619, 621-23 (2005). See also SOEHARNO, *supra* note 18 at 42-44.

addition, arguments have been put forth focusing on the value of the lawyer’s oath as a contract that binds the conscience of the lawyer, even when— or especially when— there are no real-world consequences for violating the oath.<sup>22</sup> Scholars have also argued that the tradition of the oath promotes uniformity over time and place, connecting new lawyers to the centuries-old legal profession.<sup>23</sup> Lastly, I offer an additional argument: that lawyer’s oaths can be an effective goal-setting exercise for new attorneys. This section will discuss each of these theories in turn.

*a. Oaths can promote ethical guidance and moral aspiration*

Oaths often recite core values and ethical guidance.<sup>24</sup> For example, the oath of office of the President of the United States requires a pledge of faithful execution of the office and a pledge to preserve, protect, and defend the Constitution.<sup>25</sup> Doctors taking the ancient Hippocratic Oath swore to abide by ethical principles such as confidentiality and to do no harm.<sup>26</sup> Lawyer’s oaths also often, but not always, include ethical guidance as well. For example, the West Virginia Lawyer’s Oath states “I will conduct myself with integrity, dignity and civility...”<sup>27</sup> and the Wyoming Attorney’s Oath states that “I will faithfully and honestly and to

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<sup>22</sup> See e.g., Eugene R. Milhizer, *So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America*, 70 OHIO ST. L.J. 1, 58-60 (2009); JAMES S. BOWMAN AND JONATHAN P. WEST, OATHS OF OFFICE IN AMERICAN STATES: PROBLEMS AND PROSPECTS, Public Personnel Management, Vol. 50(1), 15 (2021). Cf. THOMAS HOBBS, LEVIATHAN, Part I, Chapter XIV (“It appears also, that the oath adds nothing to the obligation. For a covenant, if lawful, binds in the sight of God without the oath as much as with it; if unlawful, binds not at all, though it be confirmed with an oath.”); SOEHARNO, *supra* note 18 at 45 (“...the oath is not a surrogate for non-existent convictions, no requirement that can be sanctioned in and of itself and no magic bullet against misconduct.”). See also PAULEY, *supra* note 18 at 28 (quoting Jeremy Bentham, “Rationale of Evidence” as quoted and discussed in the entry on “OATH” in JOHN LALOR ET AL., CYCLOPAEDIA OF POLITICAL ECONOMY, AND OF THE POLITICAL HISTORY OF THE UNITED STATES (1884) (arguing oaths are irrelevant)).

<sup>23</sup> See *The Lawyer’s Oath*, *supra* note 2 at 62 (“The oath can and should inspire lawyers as to both their essential ethical duties and their higher calling in their centuries-old profession.”); SOEHARNO, *supra* note 18 at 37-44 (discussing cohesion as motive of an oath).

<sup>24</sup> See SOEHARNO, *supra* note 18 at 40-41. See also e.g., *The Lawyer’s Oath*, *supra* note 2 at 8 (discussing the “Hippocratic Oath”).

<sup>25</sup> U.S. CONST. art. II, § 1, cl. 8.

<sup>26</sup> *The Lawyer’s Oath*, *supra* note 2 at 8.

<sup>27</sup> W.V., *supra* note 10.

the best of my ability discharge the duties of an Attorney and Counselor at Law.”<sup>28</sup> Other lawyer’s oaths include a pledge to uphold the rules of professional conduct.<sup>29</sup>

Lawyer’s oaths can also promote moral aspiration.<sup>30</sup> For example, some lawyer’s oaths encourage lawyers to strive to “uphold the honor and to maintain the dignity of the profession,”<sup>31</sup> and to “treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty”.<sup>32</sup> In those examples, newly admitted attorneys are provided with high-reaching goals to strive to achieve.

Moral aspiration is arguably more important for inclusion in lawyer’s oaths than general ethical guidance because ethical guidance is already included in the rules of professional conduct in each state. Yet all too often the rules focus on which behavior is unacceptable and where disciplinary action is possible, instead of describing what a lawyer should do.<sup>33</sup> In addition, there is generally a lack of moral aspiration for the legal profession which is perpetuating unhappiness and health problems for attorneys.<sup>34</sup> Therefore, the models provided in Part VI of this article providing specific suggestions for updates to lawyer’s oaths that promote moral aspiration and not just ethical guidance.

*b. Oaths can emphasize the lawyer’s role as a public citizen with duties towards the public good*

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<sup>28</sup> WY., *supra* note 10.

<sup>29</sup> The Connecticut, Maine, Massachusetts, New Hampshire and Vermont’s lawyer’s oaths do not include a pledge to uphold the U.S. Constitution, while all other state lawyer’s oaths, including the lawyer’s oath for the District of Columbia, do include such a pledge. *See* Appendix A; CT., *supra* note 7; ME., *supra* note 7; MA., *supra* note 7; N.H., *supra* note 7; VT., *supra* note 8.

<sup>30</sup> *See* Bartlett, *supra* note 20 at 565 (defining moral aspiration as ambitions for highly ethical behavior and quoting Bernard Williams, *Professional Morality and Its Dispositions*, in THE GOOD LAWYER).

<sup>31</sup> MT., *supra* note 8 (“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...”).

<sup>32</sup> CO., *supra* note 8 (“I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty”).

<sup>33</sup> Bartlett, *supra* note 20 at Part II.

<sup>34</sup> Bartlett, *supra* note 20 at 566 (“The current lack of moral aspiration is undermining the legal profession, perpetuating unhappiness and health problems that unhappy attorneys face”).

Oaths can also help emphasize the lawyer’s role as a public citizen,<sup>35</sup> with a special responsibility for the quality of justice,<sup>36</sup> and with duties towards the public good.<sup>37</sup> For example, the Idaho lawyer’s oath requires a pledge to “contribute time and resources to public service,”<sup>38</sup> and the Colorado lawyer’s oath requires a pledge to “use my knowledge of the law for the betterment of society and the improvement of the legal system.”<sup>39</sup> The Montana lawyer’s oath requires a pledge to “to uphold the honor and to maintain the dignity of the profession to improve not only the law but the administration of justice.”<sup>40</sup> While some states contain language in the preamble to their rules of professional conduct regarding the lawyer as public citizen,<sup>41</sup> this language is also worthy of emphasis in the lawyer’s oath.

The public nature of oath-taking is important as well. Reciting the lawyer’s oath in public, surrounded by colleagues, friends, and family, judges, current attorneys, and the general public, helps highlight the public obligations of lawyers.<sup>42</sup> Moreover, it is hard to take an oath in public and not feel like the promises you are making are important, not just to you, but also to your community.<sup>43</sup> Public oath-taking also helps the values of the legal profession transparent to

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<sup>35</sup> American Bar Association (ABA) Model Rules of Professional Conduct, Preamble (2020), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/). See Irma S. Russell, *The Lawyer as Public Citizen: Meeting The Pro Bono Challenge*, 72 UMKC L. REV. 439, 621-22 (2003) (discussing the lawyer’s role as a public citizen with a special role in society that it is open to interpretation, but invokes an” affirmative commitment to the social goal of a just society”); *The Lawyer’s Oath*, *supra* note 2 at 26; Picchi, *supra* note 14 at 308-309.

<sup>36</sup> See ABA Model Rules, Preamble, *supra* note 35.

<sup>37</sup> See Russell, *supra* note 35.

<sup>38</sup> CO., *supra* note 8.

<sup>39</sup> ID., *supra* note 8.

<sup>40</sup> MT., *supra* note 8.

<sup>41</sup> See e.g., Delaware Rules of Professional Conduct, Preamble (2003), <https://courts.delaware.gov/ODC/Digest/dlrpc.aspx>.

<sup>42</sup> *The Lawyer’s Oath*, *supra* note 2 at 55. See SCHLESINGER, *supra* note 18 at 78, 189-98; Thaddeus Metz, *The Ethics of Swearing: The Implications of Moral Theories for Oath-Breaking in Economic Contexts*, 71 REV. SOC. ECON. 228, 244 (2013).

<sup>43</sup> See *The Lawyer’s Oath*, *supra* note 2 at 55; Metz, *supra* note 42 at 244; Richard S. Willen, *Rationalization of Anglo-Legal Culture: The Testimonial Oath*, 34 BRI. J. OF SOC., 109, 123 (1983) (arguing that oath taking in public “may be regarded as a ritual expression which certifies the inner moral conscience of a witness.”); SOEHARNO, *supra* note 18 at 42-44.

the community,<sup>44</sup> as well as who is becoming part of the legal profession. Transparency is key to building diversity and an inclusive culture.<sup>45</sup>

*c. Oaths as “contracts” that bind the lawyer’s conscience*

The lawyer’s oath is the main vehicle by which new lawyers promise to abide by ethical rules and uphold the constitution. Reciting the lawyer’s oath, therefore, is important in that it embodies the promise to uphold the heavy obligations required by the legal profession.<sup>46</sup> The words of the oath can help bring to the surface the weight of the promises being made and can even help bring a magical or spiritual feeling to the admission ceremony.<sup>47</sup> Often there are no real-world consequences for violating an oath, as discussed in Part IV below. Therefore, some scholars have also emphasized a commonsense theory here, the idea that “what doesn’t get said, doesn’t get heard.”<sup>48</sup> The act of saying the words out loud—reciting the promises being made upon entering the legal profession—is purpose for the oath in and of itself.

*d. Lawyer’s oaths can promote uniformity in the legal profession*

Other scholars, including professors Carol Rice Andrews and Jonathan E. Soeharno have suggested that lawyer’s oaths may connect lawyers to the age-old traditions.<sup>49</sup> Andrews further argues that lawyer’s oaths should function to promote uniformity in the legal profession.<sup>50</sup> However, this theory is not in accord with the central premise of this article envisioning a

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<sup>44</sup> See SOEHARNO, *supra* note 18 at 42-44.

<sup>45</sup> See e.g., Jamillah Bowman Williams, *Diversity as a Trade Secret*, 107 GEO. L.J. 1685, 1723 (2019) (“[E]qual opportunity objectives would best be served by favoring and treating diversity data and strategies as public resources”); Picchi, *supra* note 14 at 308-209.

<sup>46</sup> See e.g., Bowman and West, *supra* note 22 at 132.

<sup>47</sup> See e.g., *The Lawyer’s Oath*, *supra* note 2 at 6; Schlesinger, *supra* note 18 at 189-98; Helen Silving, *The Oath: I*, 68 YALE L. J. 1329, 1330 (1959) (discussing oaths taken in the courtroom).

<sup>48</sup> BOWMAN AND WEST, *supra* note 22 at 5 (citing S. Eblin, S., *What doesn’t get said, doesn’t get done*, GOV. EXEC. (Apr. 9, 2010), <https://cdn.govexec.com/b/interstitial.html?v=8.24.1&rf=https%3A%2F%2Fwww.govexec.com%2Fexcellence%2Fexecutive-coach%2F2010%2F04%2Fwhat-doesnt-get-saiddoesnt-get-heard%2F39776%2F>).

<sup>49</sup> See e.g., *The Lawyer’s Oath*, *supra* note 2 at 62; SOEHARNO, *supra* note 18 at 37-44.

<sup>50</sup> *The Lawyer’s Oath*, *supra* note 2 at 62.

dignified, respectful, and inclusive legal profession. This argument presents as a thinly veiled attempt at discrimination based on race, sex, religion and/or gender. Promoting uniformity in a profession has always been a good old [white, Christian] boys' club,<sup>51</sup> is counter to the work of many women and Black, Indigenous and other lawyers of color, who have been trying to dismantle that version of the legal profession for decades now.<sup>52</sup> No need to connect to age-old traditions, if by age-old tradition is meant the Third Reich,<sup>53</sup> Jim Crow South,<sup>54</sup> or even 1970, when women were still prohibited from practicing law in some parts of the United States.<sup>55</sup> Moreover, any argument that oaths are traditional, and thus “good,” need to be reexamined.<sup>56</sup> Building a dignified, respectful, and inclusive legal profession will require updating the oath, continuously, to reflect the relevant values of the legal profession of the day.<sup>57</sup>

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<sup>51</sup> See e.g., Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It's Still a [White] Man's Game*, 62 WASH. U. J. L. & POL'Y 025 (2020); JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1977) (arguing the bar is elitist, racist, and self-interested); SOEHARNO, *supra* note 18 at 37.

<sup>52</sup> See e.g., Nicole Johnson, *Glass Ceiling or Concrete Wall? Removing the Barriers to Gender Equality in the Legal Field Through Statutory Remedies*, 32 GEO. MASON U. CIV. RTS. L. J. 35, 41 (2021) (discussing gender transformation of the legal profession); Adjoa Artis Aiyetoro, *Can We Talk? How Triggers for Unconscious Racism Strengthen the Importance of Dialogue*, 22 NAT'L BLACK L.J. 1, 33-34 (2009) (discussing African descendant lawyers work to end discrimination in the legal profession); Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Descendants*, 18 GEO. MASON U. CIV. RTS. L.J. 51, 85-87 (2007) (discussing Black lawyers fighting against American Bar Association discrimination).

<sup>53</sup> See e.g., INGO MULLER, *HITLER'S JUSTICE: THE COURTS OF THE THIRD REICH* 32 (1991) (discussing the issuing of a report by Professor Erwin Noack, the Inspector General of the Federation (which was renamed the Federation of National Socialist Guardians of the Law) on the "desemitization of the German legal profession," bemoaning the fact that "1,753 Jews still remain among the 17,360 attorneys in the country.").

<sup>54</sup> See e.g., Aiyetoro, *supra* note 52.

<sup>55</sup> It was not until 1971 that the U.S. Supreme Court prohibited barring women from practicing law. See *Reed v. Reed*, 404 U.S. 71 (1971).

<sup>56</sup> See David Halpin et al., *In the grip of the past? Tradition, traditionalism and contemporary schooling*, 7 INT'L STUD. SOC. EDUC. 3-20 (1997), <https://doi.org/10.1080/0962021970020000>.

<sup>57</sup> See SOEHARNO, *supra* note 18 at 43 (“...it is up to the entire oath community to continuously update the underlying values to the relevant requirements of the day. Making the oath credible is not only up to the banker, but to the bank. Not just to the lawyer, but also to the bar association...”).

e. *Lawyer's oaths are an effective goal setting exercise*

There is one additional theory to offer regarding the function or purpose of the lawyer's oath—lawyer's oaths as a form of goal setting. When a new lawyer recites their oath and promises “to treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty,” that lawyer setting professional and ethical goals to be met throughout their legal career. Goal setting is an important part of strategic planning,<sup>58</sup> an integral lawyering skill that every lawyer must master.<sup>59</sup> For example, while a new admittee to the bar is reciting the oath they may contemplate what respecting all persons will entail, how they plan to behave with clients, in court and outside court as well. The lawyer's oath therefore can serve to reinforce the core lawyering skills of goal setting and strategic planning, in addition to the other functions and purposes discussed above.

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<sup>58</sup> See e.g., Jaime Alison Lee, *From Socrates to Selfies: Legal Education and the Metacognitive Revolution*, 12 DREXEL L. REV. 227, 244 (2020).

<sup>59</sup> Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795 (2012) (naming the top competencies or traits of lawyers as: drive, honesty, integrity, understanding others, obtaining and keeping clients, counseling clients, negotiation, problem solving, and strategic planning); Alex Scherr, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161, 164 (2002) (“The MacCrate Report describes the skill of legal problem solving as follows: “[A] lawyer should be familiar with the skills and concepts involved in problem solving: identifying and diagnosing a problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan, and keeping the planning process open to new information and ideas.”). See also Shawn M. Glynn et al., *Motivation to Learn in General Education Programs*, 54 J. GEN. EDUC. 150, 158 (2005), [https://www.researchgate.net/publication/236774479\\_Motivation\\_to\\_Learn\\_in\\_General\\_Education\\_Programs](https://www.researchgate.net/publication/236774479_Motivation_to_Learn_in_General_Education_Programs) (arguing that goal setting is key to motivation for learning). Clinical legal pedagogy has long recognized goal setting, along with planning, as integral lawyering skills. See e.g., Minna J. Kotkin, *Creating True Believers: Putting Macro Theory into Practice*, 5 CLIN.L.REV. 95, 97 (1995); Victor M. Goode, *There Is a Method(ology) to This Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223 (2000). The ABA Standards and Rules of Procedure for the Approval of Law Schools also now impose on law schools an explicit obligation to “establish and publish learning outcomes designed to achieve these objectives.” American Bar Association (ABA) Standards 2021-22, §301, 302, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf). The learning outcomes must include both cognitive goals and skills objectives. Elizabeth Ford, *Toward a Clinical Pedagogy of Externship*, 22 CLIN. L. REV. 113, 118 (2015). See also ABA Standard §302.

It is clear from this discussion of form and function that lawyer's oaths can be an important tool to promote professionalism and legal ethics. However, to be effective, many Lawyer's oaths need major overhauls, as discussed in Sections III and IV below.

### III. A Brief History of (and Impetus to Amend) Lawyer's Oaths in the United States

Several legal scholars have chronicled detailed histories of lawyer's oaths, as well as the history of other oaths used by lawyers in practice, including the oath that witnesses take before testifying in court and the Oath of Office of the President of the United States.<sup>60</sup> This section provides a brief synopsis of the history of the language contained in lawyer's oaths, discussing the origins of common language and formats used, as well as recent amendments to lawyer's oaths in the United States.

#### a. *Colonial Lawyer's Oaths*

Oaths are an ancient tradition and lawyer's oaths hark back to the founding of the legal profession.<sup>61</sup> In the 1700s, when lawyer's oaths were first introduced in the American colonies, taking an oath was a solemn, life-changing ritual.<sup>62</sup> Oaths were understood then to directly implicate the oath-taker's personal sense of honor.<sup>63</sup> Taking an oath and swearing in blood, in the name of a god, or on a grave, struck listeners with awe.<sup>64</sup> Many people believed nothing would be able to dissuade the oath-taker from carrying out their intentions.<sup>65</sup>

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<sup>60</sup> See e.g., *The Lawyer's Oath*, *supra* note 2; PAULEY, *supra* note 18; Milhizer, *supra* note 22; Picchi, *supra* note 14; BOWMAN AND WEST, *supra* note 22; Leonard S. Goodman, *The Historic Role of the Oath of Admission*, 11 AM. J. LEGAL HIST. 404, 407 (1967).

<sup>61</sup> *The Lawyer's Oath*, *supra* note 2 at 6-7.

<sup>62</sup> *The Lawyer's Oath*, *supra* note 2 at 25. Oaths were important enough that one of the first acts of the first Congress of the United States in 1789 was to pass a bill regarding the oath for office holders. *See id.*

<sup>63</sup> *The Lawyer's Oath*, *supra* note 2 at 25.

<sup>64</sup> *Id.*

<sup>65</sup> SCHLESINGER, *supra* note 18 at 21.



Although today women make up over 37% of the legal profession<sup>66</sup> and 14% of lawyers are people of color,<sup>67</sup> what may not be fully appreciated is that when many lawyer's oaths in the United States were first enacted in the 1700s, only upper-class white men were admitted to practice law.<sup>68</sup> Furthermore, the state bar associations and court committees that drafted and enacted the first lawyer's oaths in the United States in the 1700s were made up of only white men. Much of the traditions and that language from the early lawyer's oaths established by those white men endure today.

The language used in the first lawyer's oaths in the United States reflected the gravitas assigned to oath-taking at that time, but also the male dominance of the legal profession. For example, the Massachusetts Attorney's Oath of Office, which it claims is the oldest lawyer's oath in the United States, first adopted in 1701,<sup>69</sup> reads

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.<sup>70</sup>

The oldest lawyer's oaths in the United States, including this Massachusetts oath which predates the American Revolution, were adopted long before—in fact, hundreds of years

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<sup>66</sup> American Bar Association, Women in the Legal Profession (2021), <https://www.abalegalprofile.com/women/#:~:text=The%20percentage%20of%20female%20lawyers,the%20percentage%20stood%20at%2037%25.>

<sup>67</sup> American Bar Association, Lawyer's by Race and Ethnicity (2020), [https://www.americanbar.org/groups/young\\_lawyers/projects/men-of-color/lawyer-demographics/](https://www.americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics/).

<sup>68</sup> See History, New York Women's Bar Association, <https://www.nywba.org/history2/>; American Bar Association Journal, *14 Groundbreaking Black Lawyers*, [https://www.abajournal.com/gallery/groundbreaking\\_black\\_lawyers/1918](https://www.abajournal.com/gallery/groundbreaking_black_lawyers/1918).

<sup>69</sup> See Christopher P. Sullivan, *Massachusetts Attorney's Oath of Office*, MASSBAR ASSOC. L.J. (Nov./Dec. 2017), <https://www.massbar.org/publications/lawyers-journal/lawyers-journal-article/lawyers-journal-2017-november-december/massachusetts-attorney-s-oath-of-office>.

<sup>70</sup> MA., *supra* note 7 (emphasis added). Some early lawyer's oaths have already been amended to use only gender-neutral terminology, such as changing the word "man" to "person". See e.g., N.H., *supra* note 7.

before—the rules of professional conduct were enacted.<sup>71</sup> Lawyer’s oaths served as the principal form of regulation for lawyers until the early 1900s when the rules came into play.<sup>72</sup> Early on, lawyer’s oaths were also the sole source of formal ethical guidance for new attorneys.<sup>73</sup> Ethical principles such as honesty, avoiding delay, using one’s full intellectual abilities, and fidelity, were all present in early lawyer’s oaths.<sup>74</sup>

Much of the language in early lawyer’s oaths came from one of the earliest formulations of the oath, during the Elizabethan Era.<sup>75</sup> Today, much of the language contained in the Elizabethan oaths enacted in Colonial America remains largely unchanged or identical.<sup>76</sup> In fact, in addition to the Massachusetts lawyer’s oath, seventeen (17) additional lawyer’s oaths across the United States still require lawyers to pledge not to delay for “lucre or malice.”<sup>77</sup> The use of

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<sup>71</sup> In 1887, the Alabama State Bar Association promulgated the first code of ethics for lawyers. *The Lawyer’s Oath*, *supra* note 2 at 35. The American Bar Association adopted and published a national model ethics code (including a model oath) in 1908. *Id.*

<sup>72</sup> Hazard and Dondi, *supra* note 2 at 60; *The Lawyer’s Oath*, *supra* note 2 at 50.

<sup>73</sup> See Goodman, *supra* note 60 at 410.

<sup>74</sup> *Id.*

<sup>75</sup> The Elizabethan oath read:

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 with after your Cunning;  
and ye shall not defer, tract, or delay their Causes willingly,  
for covetous of Money, or other Thing that may turn  
you to Profit; and ye shall give due Attendance accordingly;  
as God you help, and by the Contents of this Book.

Goodman, *supra* note 60 at 409.

<sup>76</sup> For example, Pennsylvania’s Oath reads much as it did more than two hundred and fifty years ago:

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.

42 PA. C.S.A. § 2522. See also KY., *supra* note 9.

<sup>77</sup> The lawyer’s oaths in Alabama, Delaware, Florida, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin require lawyers not to delay for lucre or malice. See ALA. CODE § 34-3-15; DE. SUP. CT. R. 54; FLA. STAT. ANN., Oath of Admission, <https://www.floridabar.org/prof/regulating-professionalism/oath-of-admission/>; LA. SUP. CT., Lawyer’s Oath, <https://www.lascba.org/info/Admission/#oath>; KS. SUP. CT. R. 726; ME., *supra* note 7; MASS., *supra* note 7; MI., *supra* note 8; MINN. STAT. ANN. §358.07(9); MISS. CODE § 73-3-35; N.H., *supra* note 7; N.M., *supra* note 8; OKLA. STAT. ANN. TIT. V § 2; PA., *supra* note 76; R.I., *supra* note 13; S.D. CODIFIED LAW § 16-16-18; VT., *supra* note 8; WIS. SUP. CT. R. 40.15.

obsolete language in lawyer's oaths today is problematic. It is harder to feel the gravitas of the pledges being made if one does not understand or connect with the words being used. If new lawyers being sworn in recite words such as *lucre*,<sup>78</sup> without knowing exactly what that word means or connecting the words being said with an actual pledge, then there is little point to taking the oath.<sup>79</sup>

*b. Other Early Lawyer's Oaths in the United States*

Twenty (20) states, the District of Columbia, and most federal courts use very simple oaths, focusing on a promise to uphold the constitution.<sup>80</sup> These simple lawyer's oaths date back to 1729 with origins in England.<sup>81</sup> An example of a simple lawyer's oath is the oath of admission to the Supreme Court of the United States, which was adopted in 1790 and remains unamended today.<sup>82</sup> That oath reads:

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 the law, and that I will support the Constitution of the United States.<sup>83</sup>

While short and seemingly to the point, these simple pledges are also problematic. First, there is no mention of ethical rules or any pledge to follow ethical guidance. Second, the brief pledges that are contained in this oath are vague and inappropriate at the same time. A pledge to

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<sup>78</sup> 'Lucre' refers to riches, money, now chiefly in a humorous sense, as in 'filthy lucre.' See Timothy 3:3 (King James) ("Not given to wine, no striker, not greedy of filthy lucre; but patient, not a brawler, not covetous").

<sup>79</sup> See Section II, *supra*, discussing the purpose of taking an oath of admission.

<sup>80</sup> See CA., *supra* note 11; DE., *supra* note 77; GA., *supra* note 8; IL., *supra* note 7; OK., *supra* note 77; MD., *supra* note 10; MN., *supra* note 76; MS., *supra* note 77; NE., *supra* note 9; N.Y., *supra* note 10; N.J., *supra* note 9; S.C. APP. CT. R. § 402(h)(3) (2022); S.D., *supra* note 77; N.D., *supra* note 9; OR., *supra* note 8; PA., *supra* note 76; TN., *supra* note 9; VA. CODE ANN. § 54.1-3903; W.V., *supra* note 10; WY., *supra* note 10. See also D.C. CT. APP. R. 46 § L; U.S. District Courts, Attorney Oath of Admission, <http://www.uscourts.gov/forms/attorney-forms/attorney-oath-admission>.

<sup>81</sup> *The Lawyer's Oath*, *supra* note 2 at 48.

<sup>82</sup> Supreme Court of the United States, Application for Admission to Practice, <https://www.supremecourt.gov/bar/barapplication.pdf>.

<sup>83</sup> *Id* at 2. Another example of a simple lawyer's oath is the California lawyer's oath. CA., *supra* note 11.

support the constitution in a lawyer’s oath is difficult if not impossible to enforce.<sup>84</sup> Does “support” preclude arguing for amendments to the constitution or a new constitutional convention? Does “support” preclude litigating new and different constitutional interpretations? Acts of terrorism or other potential violations of a pledge to support the constitution should likely be dealt with through criminal law and not legal ethics.<sup>85</sup> Moreover, there are a growing number of lawyers who consider a pledge to “support” the world’s oldest written charter of government<sup>86</sup>, the U.S. Constitution—a document that recognizes slaves as three fifths of all other persons and does not recognize women—is undignified.<sup>87</sup>

Finally, the simple lawyer’s oaths often contain outdated language. For example, the oath of admission for the Supreme Court of the United States includes a pledge to conduct oneself “uprightly.” “Uprightly” may have meant to refer to strong moral rectitude in 1790,<sup>88</sup> however today “upright” is usually used to refer to being vertical or erect in posture.<sup>89</sup> This terminology is awkward and ableist for attorneys with disabilities. It should not matter whether an attorney is upright (with today’s definition) when practicing law. Updating the oath with modern, direct language, such as a pledge to conduct oneself with dignity and integrity, would be more accessible, impactful, and inclusive.

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<sup>84</sup> See e.g., Evan D. Bernick, *43rd Annual Symposium Articles: The Morality of the Presidential Oath*, 47 OHIO N.U.L. REV. 33, 35 (2021); Michael Stokes Paulsen, *The Most Dangerous Branch: Executive Power to Say What the Law Is*, 83 GEO. L.J. 217, 260 (1994).

<sup>85</sup> See Basile, *supra* note 7.

<sup>86</sup> United States Senate, Constitution of the United States, [https://www.senate.gov/civics/constitution\\_item/constitution.htm](https://www.senate.gov/civics/constitution_item/constitution.htm). State constitutions, on the other hand, are almost constantly amended. See e.g., JL Marshfield, *Forgotten Limits on the Power to Amend State Constitutions*, 114 NW. U. L. REV. 65, 67-69 (2019); Mila Versteeg and Emily Zacki, *American Constitutional Exceptionalism Revisited*, 81 U. CHI. L. REV. 1641, 1644-45 (2014).

<sup>87</sup> See e.g., Gabriel J. Chin and Saira Rao, *Pledging Allegiance to the Constitution: The First Amendment and Loyalty Oaths for Faculty at Private Universities*, 64 U. PITT. L. REV. 431, 450 (2003) (“There are respectable arguments that the Constitution is unworthy of the people...The race critique is central; one could understand how, before 1865 or 1954, a person of color would have hesitated to swear loyalty to the Constitution of slavery...women had no hand in shaping most of the document and arguably continue to be patronized by it.”).

<sup>88</sup> *Upright Definition*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/upright>.

<sup>89</sup> *Id.*

Other early lawyer's oaths include the notorious Kentucky oath, which was enacted in 1849 and remains unchanged today.<sup>90</sup> The Kentucky oath requires lawyers seeking admission to the Kentucky Bar to swear that they

...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...<sup>91</sup>

The Commonwealth of Kentucky is the only state to require newly admitted lawyers today to promise that they will not fight a duel.<sup>92</sup> Making new lawyers in Kentucky take this pledge is inappropriate. The last known duel in Kentucky took place in the 1860s.<sup>93</sup> Moreover, dueling was entirely limited to wealthy white men in its heyday.<sup>94</sup> There have been recent efforts to amend the Kentucky oath, but those efforts have been unsuccessful.<sup>95</sup>

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<sup>90</sup> KY., *supra* note 9 (Text as ratified on: August 3, 1891, and revised September 28, 1891. Not yet amended); Adam K. Raymond, *New Kentucky Governor Takes Oath, Swears He's Never Fought a Duel*, NY MAG. (Dec. 10, 2019), <https://nymag.com/intelligencer/2019/12/new-kentucky-gov-takes-oath-swears-hes-never-fought-a-duel.html>.

<sup>91</sup> KY., *supra* note 9. The full Kentucky oath reads:

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.

KY., *supra* note 9. The lawyer's oath is the same oath that all public officials in Kentucky must take. *See id.*

<sup>92</sup> *See* Appendix A.

<sup>93</sup> *See* Raymond, *supra* note 90.

<sup>94</sup> *See* JOE L. COKER, LIQUOR IN THE LAND OF THE LOST CAUSE: SOUTHERN WHITE EVANGELICALS AND THE PROHIBITION MOVEMENT 177 (2007); DICK STEWARD, DUELS AND THE ROOTS OF VIOLENCE IN MISSOURI 86 (2000).

<sup>95</sup> *See* Stu Johnson, *Kentucky Duels Over Oath of Office*, NPR (Mar. 12, 2010), <https://www.npr.org/templates/story/story.php?storyId=124616129>.

c. *The 1908 Model Lawyer's Oath*

The American Bar Association (ABA)<sup>96</sup> has historically had a great deal of influence on the language used in lawyer's oaths across the United States. Since its founding in 1878,<sup>97</sup> the ABA has played a central role in developing ethics rules and promoting professionalism in the legal profession.<sup>98</sup> However, the ABA also played a central role in excluding non-white, non-Christian, and/or non-male lawyers from the legal profession, which is reflected in ethical rules and lawyer's oaths.<sup>99</sup> When the ABA released a model lawyer's oath in 1908,<sup>100</sup> no women or

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<sup>96</sup> American Bar Association, About the American Bar Association, [https://www.americanbar.org/about\\_the\\_aba/?http://utm\\_medium=sem&utm\\_source=google&utm\\_campaign=extension=](https://www.americanbar.org/about_the_aba/?http://utm_medium=sem&utm_source=google&utm_campaign=extension=).

<sup>97</sup> See American Bar Association, About the American Bar, ABA Timeline (2020), [https://www.americanbar.org/about\\_the\\_aba/timeline/](https://www.americanbar.org/about_the_aba/timeline/).

<sup>98</sup> See Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 LAW & SOC. INQUIRY 1, 30 (1999); James Altman, *Considering the A.B.A.'s 1908 Canons of Ethics*, 71 FORDHAM L. REV. 2395, 2422 (2003). See also Bartlett, *supra* note 20 at 571.

<sup>99</sup> The first Black lawyer was not admitted to the ABA until 1950. See ABA Timeline, *supra* note 97. The first woman was admitted to the ABA in 1918. See American Bar Association, Historical Women, [https://www.abajournal.com/gallery/historical\\_women/756](https://www.abajournal.com/gallery/historical_women/756).

<sup>100</sup> The 1908 ABA model oath stated:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of . . . ;

I will maintain the respect due the 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 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 of the defenseless or oppressed, or delay any **man's**

Black lawyers were admitted as members to the ABA<sup>101</sup> and it recommended that this model oath be adopted by all of the U.S. states and territories.<sup>102</sup>

Some of the language from the ABA’s model oath was drawn directly from the Elizabethan oath, including the promise not to “delay any man’s cause for lucre or malice”.<sup>103</sup> However, other language in the 1908 model oath was new, such the promise to “never reject, from any consideration personal to myself, the cause of the defenseless or oppressed”.<sup>104</sup>

Much of the language from the 1908 model oath endures in lawyer’s oaths across the United States today, more than a hundred years after the model oath was released. The language of the oaths in five (5) states remains identical, or almost identical, to the 1908 model lawyer’s oath.<sup>105</sup> In a two additional states, the lawyer’s oath remains identical to the model oath besides the addition of a sentence or two.<sup>106</sup> The “defenseless or oppressed” language also shows up in fourteen (14) state lawyer’s oaths today.<sup>107</sup> Shortly after its adoption, the model oath fell into the

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cause for lucre or malice. **SO HELP ME GOD.**

American Bar Association, 1908 Canons of Professional Conduct 585 (1908), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/1908\\_code.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf) (emphasis added).

<sup>101</sup> See ABA Timeline, *supra* note 97.

<sup>102</sup> See 1908 Canons of Professional Conduct, *supra* note 100 (“We commend this form of oath for adoption by the proper authorities in all the states and territories.”). The ABA continued to play a central role in the development of lawyer’s oaths in the decades that followed. See e.g., Basile, *supra* note 7 (discussing the 1950 American Bar Association resolution “requesting state bars to require each attorney to take an “anti-Communist” oath and to file an affidavit stating whether he was or ever had been a member of the Communist Party or any organization advocating the overthrow of the United States government.”).

<sup>103</sup> 1908 Canons of Professional Conduct, *supra* note 100; Goodman, *supra* note 60 at 409.

<sup>104</sup> See 1908 Canons of Professional Conduct, *supra* note 100.

<sup>105</sup> The Indiana, Iowa, Michigan, Washington, and Wisconsin Lawyer’s oaths are almost identical to the 1908 Model Oath. See IND. CT. R. 22; Roxann Ryan, *Students propose statutory changes in Iowa Lawyer’s Oath*, IOWA LAW 8 (May 2005), [https://libguides.law.drake.edu/ld.php?content\\_id=9410100](https://libguides.law.drake.edu/ld.php?content_id=9410100); MI., *supra* note 8; WA., *supra* note 8; WI., *supra* note 77.

<sup>106</sup> The Louisiana lawyer’s oath contains one additional sentence: “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.” LA., *supra* note 76. The Florida oath contains the same language, except adds one additional paragraph on conduct towards opposing parties and their counsel. FL., *supra* note 77.

<sup>107</sup> The lawyer’s oaths in Arkansas, Colorado, Florida, Idaho, Indiana, Iowa, Louisiana, Michigan, Missouri, New Mexico, South Carolina, South Dakota, Washington, and Wisconsin all contain the term “defenseless or oppressed”. AR., *supra* note 8; CO., *supra* note 8; FL., *supra* note 77; ID., *supra* note 8; IN., *supra* note 105; IA., *supra* note 105; LA., *supra* note 77; MI., *supra* note 8; MO., *supra* note 8; N.M., *supra* note 8; S.C., *supra* note 80; S.D. CODE L. § 16-16-18; WA., *supra* note 8; WI., *supra* note 77.



shadows as the ABA focused its attention on its Model Rules of Professional Responsibility,<sup>108</sup> and later, the Model Rules of Professional Conduct.<sup>109</sup>

Given that the ABA has never released another version of its model oath and made only one minor amendment to the oath in 1977,<sup>110</sup> the ABA should consider drafting and publishing an updated model lawyer's oath taking into consideration the arguments, suggestions, and guidelines contained in this article. If the ABA were to adopt a new model lawyer's oath that included human rights norms,<sup>111</sup> or even a pledge to uphold human rights, history tells us that many states would be likely to adopt the model oath word-for-word.

*d. Civility Amendments to Lawyer's Oaths*

Much of the impetus for amendments to lawyer's oaths in recent years has been efforts to address civility in the legal profession. Incivility has long been a concern for the legal profession,<sup>112</sup> but the civility movement really gained steam starting the late 1980s and continues to be influential today.<sup>113</sup> Over the years, a total of thirteen (13) states have amended their

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<sup>108</sup> *The Lawyer's Oath*, *supra* note 2 at 44.

<sup>109</sup> *Id.* at 34.

<sup>110</sup> *Id.* at 43-4. No state has adopted the ABA's amended model oath language. *Id.* at 44.

<sup>111</sup> For more on what is meant by human rights norms, see Part V. *infra*.

<sup>112</sup> See Bartlett, *supra* note 20 at 559 ("Incivility and unethical behavior in the legal profession have long been topics of concern in the United States"); Eli Wald and Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601, 608-13 (2016) (discussing the bar leaders and scholars complaints regarding the "decline, betrayal, or death" of civility in the legal profession for more than a generation); David Grenardo, *Making Civility Mandatory: Moving from Aspired to Required*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 239, 241 (2013); KEITH BYBEE, HOW CIVILITY WORKS 3 (2016); Donald E. Campbell, *Raise Your Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 101-2 (2012). See also Amy. R. Mashburn, *Professionalism In The Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s: Professionalism As Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U.L. REV. 657, 675-76 (1994).

<sup>113</sup> See e.g., American Bar Association, Commission on Professionalism, "...In the spirit of public service: A blueprint for the rekindling of lawyer Professionalism" (1986), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011build/stanley\\_commission\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011build/stanley_commission_report.pdf); Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX L. REV. 259, 294 (1995). See also Grenardo, *supra* note 112 at 250 ("The legal profession's response to incivility includes, among other things, numerous state and local bar associations adopting guidelines of civility...state bars adding civility in their oaths for newly admitted lawyers, and...several states requiring civility."); *The Lawyer's Oath*, *supra* note 2 at 46. See also ABOTA Foundation, Civility Matters, [https://www.abota.org/Foundation/Foundation/Professional\\_Education/Civility\\_Matters.aspx](https://www.abota.org/Foundation/Foundation/Professional_Education/Civility_Matters.aspx).



lawyer's to add pledges of civility.<sup>114</sup> West Virginia amended its lawyer's oath in 2021 to add the following: "I will conduct myself with integrity, dignity and *civility* and show respect toward judges, court staff, clients, fellow professionals and all other persons."<sup>115</sup> Florida, in 2011, based on "concerns...about acts of incivility among members of the legal profession," added a pledge of civility to its lawyer's oath which reads "I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."<sup>116</sup>

Despite much agreement that the legal profession should be more "civil",<sup>117</sup> there is still much disagreement over what types of behavior should count as "civil."<sup>118</sup> While civility pledges may seem to be a good idea in theory, imposing civility can help maintain or exacerbate

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<sup>114</sup>Arkansas, Florida, Hawaii, Iowa, Louisiana, Montana, New Mexico, Ohio, Oregon, South Carolina, Texas, Utah and West Virginia have all amended their lawyer's oaths in recent years to include civility. *See In re Attorney Oath of Admission*, 2012 ARK. 82 (2012); Florida Bar, Revised Admission Oath Now Emphasizes Civility, <https://www.floridabar.org/the-florida-bar-news/revised-admission-oath-now-emphasizes-civility/>; HAW., *supra* note 8; IA., *supra* note 105; LA., *supra* note 77; Montana, Memo. in Support of Application Invoking Orig. Jurisdiction of This Court Pursuant to Sec. VI, Internal Operating Rules, to Regulate Bar of Mont., 1, 4 (July 2, 2010), <https://juddocumentservice.mt.gov/getDocByCTrackId?DocId=30151>; N.M., *supra* note 8; S.C., *supra* note 79; OH., *supra* note 8; OR., *supra* note 8; S.C., *supra* note 80; David Chamberlain, *Celebrating Civility How A New Oath Is Uniting Lawyers Across the State*, 78 TEX. B.J. 858 (2015); UT., *supra* note 7; W.V., *supra* note 1. *See also The Lawyer's Oath*, *supra* note 2 at 61. In addition, in Arizona and Utah, lawyers swear to adhere to the state civility code while taking the lawyer's oath. The Arizona lawyer's oath requires a pledge to adhere to A Lawyer's Creed of Professionalism of the State Bar of Arizona. *See AZ.*, *supra* note 7. The Utah lawyer's oath requires lawyers to pledge to "faithfully observe...the Standards of Professionalism and Civility". Ut., *supra* note 8.

<sup>115</sup> W.V., *supra* note 1 (emphasis added).

<sup>116</sup> Grenardo, *supra* note 112 at 252 (citing *In re Fla. Bar*, 73 So.3d 149, 149-50 (2011)); Keith W. Rizzardi, *Expectations In The Mirror: Lawyer Professionalism And The Errors Of Mandatory Aspirations*, 44 FLA. ST. U.L. REV. 692, 699 (2017).

<sup>117</sup> *See* Grenardo, *supra* note 112 at 242; Cheryl B. Preston & Hilary Lawrence, *Incentivizing Lawyers to Play Nice: A National Survey of Civility Standards and Options for Enforcement*, 48 U. MICH. J. L. REFORM 701 (2015); Atkinson, *supra* note 113 at 259 (discussing "civility" pledges and other moves to mandate courtesy and civility). *See also* Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 663 (1994) (arguing that civility codes are attempts by an increasingly isolated legal elite to impose their values on other lawyers that they consider less prestigious); Campbell, *supra* note 112 at 105 ("Others, however, are skeptical of the civility movement and see the effort as motivated by the self-interest of a select few to keep the bar as insulated as possible.").

<sup>118</sup> *See* BYBEE, *supra* note 112 at 5; Grenardo, *supra* note 112 at 242; Atkinson, *supra* note 113 at 294 (describing incivility as a "know-it-when-I-see-it" problem"); Lynn Mie Itagaki, *The Long Con of Civility*, 52 CONN. L. REV. 446 (2021).

“racial, gendered, heteronormative, and ableist hierarchies.”<sup>119</sup> The proposed updated oaths in Part VI of this article therefore do not include a civility pledge.

*e. Promising vs. Swearing vs. Affirming a Lawyer’s Oath*

Another long-standing tradition that continues for lawyer’s oaths today in many states is the choice to either swear<sup>120</sup> or affirm a lawyer’s oath, as well as the “so help me god” statement so often found at the end of the oath.<sup>121</sup> Once upon a time, all oaths were sworn to God.<sup>122</sup> Even as late as the 1960s, many jurisdictions required oath takers to swear to God.<sup>123</sup> There was a long-held stereotype that “[p]romises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist.”<sup>124</sup>

However, by the end of the twentieth century, every jurisdiction in the United States except Oklahoma had enacted a statute allowing for the choice of affirmation for any oath taker in court.<sup>125</sup> While it has been legally required that attorneys being admitted to the bar be given the option of affirmation for several decades, the text of many lawyer’s oaths do not reflect that choice.<sup>126</sup> These oaths should be amended to expressly allow for a choice of words—e.g. “I

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<sup>119</sup> Itagaki, *supra* note 118 at 1171. See CodeSwitch, *When Civility is Used as a Cudgel Against People of Color*, NPR (Mar. 14, 2019), <https://www.npr.org/sections/codeswitch/2019/03/14/700897826/when-civility-is-used-as-a-cudgel-against-people-of-color>.

<sup>120</sup> See e.g., 1908 Canons of Professional Conduct, *supra* note 100.

<sup>121</sup> See *id.*

<sup>122</sup> See *Torcaso v. Watkins*, 367 U.S. 488, 496 (1961) (holding that the requirement of declaration of a belief in the existence of God, as a test for office, invaded the freedom of belief and religion of the petitioner).

<sup>123</sup> See *id.*

<sup>124</sup> JOHN LOCKE, A LETTER CONCERNING TOLERATION 32 (1689); Milhizer, *supra* note 22 at 29.

<sup>125</sup> Milhizer, *supra* note 22 at 39. See also *Torcaso*, *supra* note 122; *Cox v. State*, 79 S.E. 909, 909 (Ga. Ct. App. 1913); *State v. Davis*, 418 S.E.2d 263, 265 (N.C. Ct. App. 1992), *pet. denied*, 426 S.E.2d 710 (N.C. 1993).

<sup>126</sup> The lawyer’s oaths in Florida, Georgia, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, Rhode Island, Texas, Utah and Wyoming all officially use the term “swear” instead of providing the option of affirming. See FL., *supra* note 77; GA., *supra* note 8; ME., *supra* note 7; MA., *supra* note 7; MN., *supra* note 77; MO., *supra* note 8; NE., *supra* note 9; N.J., *supra* note 9; N.C. CONST. ART. VI, § 7 AND N.C. GEN. STAT. ANN. § 11-11; OK., *supra* note 77; R.I., *supra* note 13; V.T.C.A., GVM’T. CODE § 82.037; Ut., *supra* note 8; WY., *supra* note 10.

swear or affirm”, “I declare”,<sup>127</sup> or “I promise”<sup>128</sup>—or states should consider removing all such language altogether.

This brief history of the language in lawyer’s oaths in the United States tracks the checkered past of the legal profession in the United States, marked by discrimination on the basis of race, gender, class, religion, and more.<sup>129</sup> Given this checkered past, it may be surprising how much old language endures in lawyer’s oaths across the United States. Instead of connecting lawyers to age-old discriminatory practices, lawyer’s oaths should transcend the past and be remade as accessible, impactful, and effective tools to promote professionalism and legal ethics. Section IV *infra* discusses how easy it may be for many states to amend lawyer’s oaths through bar association or supreme court committees, as well as whether lawyer’s oaths are enforced for attorney disciplinary purposes which may change considerations regarding proposed amendments.

#### IV. Process and Enforceability Concerns for Amendments to Lawyer’s Oaths in the United States

There are a multitude of good reasons to amend lawyer’s oaths, including to remove inappropriate, discriminatory, and obsolete language, as discussed above. Amending lawyer’s oaths is easier in some states than others, especially since many states continue to use the

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<sup>127</sup> The Washington lawyer’s oath, for example, does not require swearing or affirming, but instead requires new lawyers to “solemnly declare.” WA., *supra* note 8.

<sup>128</sup> Jurisdictions may consider allowing newly admitted lawyers to “promise” instead of “affirm” or “swear”. Promises are heavily emphasized in law practice today through contract law and are very familiar to attorneys in the United States. *See e.g.*, Aditi Bagchi, *Separating Contract and Promise*, 38 FLA. ST. U.L. REV. 709, 727 (2011) (“...it is useful to speak of contract as a kind of promise (distinct from the substantial subset of promise that is private promise) because it highlights certain moral properties that contract has in common with other kinds of promise.”); Daniel Markovits, *Contract and Collaboration*, 113 YALE L.J. 1417, 1514 (2004) (“When persons make promises and contracts, they cease to be strangers and come to treat each other, affirmatively, as ends in themselves.”); Jody S. Kraus, *The Correspondence of Contract and Promise*, 109 COLUM. L. REV. 1603, 1614 (2009) (“...contract law enforces promises, which create moral obligations, not duties.”). Interestingly, only New Jersey uses the word “promise” in its lawyer’s oath, requiring newly admitted lawyers to state “I do solemnly promise and swear...” *See* N.J., *supra* note 9.

<sup>129</sup> *See* Picchi, *supra* note 14 at 309.

lawyer's oath for attorney disciplinary purposes.<sup>130</sup> In those states that continue to enforce their lawyer's oath for attorney disciplinary purposes, the amendments will need to avoid the use of vague language and should differentiate between ethical aspiration and promises that are meant to be enforced, as seen in the examples in Section V. below. This section discusses the various approaches to enacting and enforcing lawyer's oaths, state by state in the United States.

Nineteen (19) states have codified their lawyer's oath into a statute enacted by the state legislature.<sup>131</sup> In Kentucky, New York, and North Dakota, the oath taken by newly admitted lawyer's is in the state constitution.<sup>132</sup> When an oath is codified by statute or incorporated into the state constitution, enacting amendments may be procedurally difficult and time consuming depending on the state legislative process.<sup>133</sup>

Twenty-two (22) states and the District of Columbia have adopted their lawyer's oath as a rule of court or a rule governing admission to the bar.<sup>134</sup> In those jurisdictions where a bar or

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<sup>130</sup> Twenty-six (26) states and the District of Columbia enforce their lawyer's oath for attorney disciplinary purposes. Arizona, California, Florida, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, South Carolina, South Dakota, Washington, Wisconsin, and the District of Columbia have statutes that provide for the enforcement of the lawyer's oath for attorney disciplinary purposes. *See* Appendix A. In addition, in Arkansas, Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, Ohio, Oregon, Pennsylvania, and Utah, case law suggests that lawyers are disciplined for violations of the lawyer's oath. *See* Appendix A. In the remaining twenty-two (24) states, Alabama, Alaska, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Michigan, Missouri, Mississippi, New Jersey, New York, Nevada, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia and Wyoming, the lawyer's oath is not enforced for attorney disciplinary purposes. *See* Appendix A

<sup>131</sup> Alabama, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Mississippi, Minnesota, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont, Virginia, and Washington have codified their lawyer's oath into a statute. *See* Appendix A; AL CODE § 34-3-15; CT., *supra* note 7; IL., *supra* note 9; Ind. Ct. R. 22; ME., *supra* note 7; MD., *supra* note 10; MASS., *supra* note 7; MS., *supra* note 77; MN., *supra* note 77; N.H., *supra* note 7; N.J., *supra* note 9; N.C., *supra* note 126; OK., *supra* note 77; PA., *supra* note 76; S.D., *supra* note 77; TX., *supra* note 126; VT., *supra* note 8; VA., *supra* note 80; WA., *supra* note 8.

<sup>132</sup> *See* Appendix A; KY., *supra* note 9; N.Y., *supra* note 10; N.D., *supra* note 9.

<sup>133</sup> *See e.g.*, Jonathan L. Marshfield, *Forgotten Limits on the Power to Amend State Constitutions*, 114 NW. U.L. REV. 65, 76-77 (2019); John Dinan, *The Unconstitutional Constitutional Amendment Doctrine in the American States: State Court Review of State Constitutional Amendments*, 72 RUTGERS U. L. REV. 983, 996 (2020).

<sup>134</sup> Alaska, Arizona, Arkansas, Delaware, Hawaii, Georgia, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, Ohio, Rhode Island, South Carolina, Tennessee, Utah, West Virginia, Wisconsin, Wyoming and the District of Columbia. *See* Appendix A; AK., *supra* note 8; ARIZ., *supra* note 8; AR., *supra* note 8; DE., *supra* note 77; HAW., *supra* note 8; GA., *supra* note 8; ID., *supra* note 8; KS., *supra* note 77; MI., *supra* note 8; MO., *supra* note 8; MT., *supra* note 8; NE., *supra* note 9; NEV., *supra* note 8; N.M., *supra* note 8; OH., *supra* note 8; R.I.,

court committee is in charge, amendments to lawyer's oaths may be easier than amending a statute since there are many fewer people involved in the process and all are lawyers or judges.<sup>135</sup> However, many of these same states enforce their lawyers oaths for attorney disciplinary purposes, which makes the language used in amendments critical.

In California, Colorado, Florida, Iowa, Louisiana, and Oregon, the lawyer's oaths do not appear to be codified or otherwise enacted as a rule, regulation, or statute, of any sort.<sup>136</sup> In those states, the amendment process is a mystery. In addition, in all six (6) of these states, the lawyer's oath is enforced for disciplinary purposes.<sup>137</sup> Therefore, language used in those amendments will need to be carefully crafted.

The rules of professional conduct have long eclipsed the lawyer's oath as the primary source for attorney regulation in the United States.<sup>138</sup> Even when a lawyer's oath is enforced, it is rare that the rules of professional conduct are not cited at the same time.<sup>139</sup> At first it may be unclear why states continue to enforce lawyer's oaths for the purposes of attorney discipline when the rules of professional conduct are much more detailed and on point. However, some states turn to the lawyer's oath for attorney discipline where the rules of professional conduct do not quite reach.

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*supra* note 13; S.C., *supra* note 80; TN., *supra* note 9; UT., *supra* note 8; W.V., *supra* note 10; WI., *supra* note 77; WY., *supra* note 10; D.C., *supra* note 80.

<sup>135</sup> See e.g., Quintin Johnstone, *Bar Associations: Policies and Performance*, 15 YALE L. & POL'Y REV. 193, 198-9 (1996).

<sup>136</sup> See Appendix A; CA., *supra* note 11; IA., *supra* note 105; LA., *supra* note 77; OR., *supra* note 8.

<sup>137</sup> See *id.*

<sup>138</sup> See Hazard and Dondi, *supra* note 2 at 60; *The Lawyer's Oath*, *supra* note 2 at 50.

<sup>139</sup> For example, the Maryland Bar mentioned violating the lawyer's oath while disbaring an attorney for violating the Maryland lawyer's oath in 2022. See *Att'y Grievance Comm'n of Maryland v. O'Neill*, 477 Md. 632, 670-71, 271 A.3d 792, 815 (2022) ("By violating several rules of professional responsibility, Respondent did not fairly and honorably discharge the ethical duties, embodied in the oath, and required by all members of the Maryland bar. In the aggregate, Respondent's conduct warrants the ultimate sanction of disbarment.").

For example, Delaware’s rules of professional conduct require candor toward the tribunal under Rule 3.3 and prohibit lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation under Rule 8.4(c).<sup>140</sup> Yet, the Supreme Court of Delaware disbarred an attorney who had been previously suspended for misrepresentation and deceit to the Board on Professional Responsibility.<sup>141</sup> In that case, the attorney did not lie to a “tribunal,” but was found to have lied to the Board on Professional Responsibility on his Reinstatement Questionnaire submitted when he was seeking restoration of his suspended law license.<sup>142</sup> The Delaware Supreme Court found that the attorney’s misrepresentation and deceit was a violation of the lawyer’s oath and subsequently disbarred the attorney.<sup>143</sup> Perhaps because the lie was not made while the attorney was practicing law and his license was suspended at the time, the Court decided to rely on the oath instead of the rules of professional conduct for attorney disciplinary purposes.

In other cases, it is unclear why the lawyer’s oath was enforced rather than the rules of professional conduct. In *Kalil’s Case*, the New Hampshire Supreme Court suspended an attorney for three months for failing to honor this statement in the lawyer’s oath that they “...will do no falsehood, nor consent that any be done in the court.”<sup>144</sup> That court held that not only did the attorney “act unprofessionally by attempting to intimidate a pro se litigant outside the courtroom, he abandoned his oath by lying about his conduct when questioned by the judge...”<sup>145</sup> New Hampshire has a Rule 3.3 Candor Toward the Tribunal,<sup>146</sup> much like

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<sup>140</sup> Delaware Rules of Professional Conduct, *supra* note 41 at Rule 3.3, Rule 8.4.

<sup>141</sup> *In re Davis*, 43 A.3d 856, 865–66 (Del. 2012).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Kalil’s Case*, 773 A.2d 647, 648–49 (N.H. 2001).

<sup>145</sup> *Id.*

<sup>146</sup> See New Hampshire Rules of Professional Conduct, 3.3 Candor Toward the Tribunal, <https://www.courts.nh.gov/new-hampshire-rules-professional-conduct>.

Delaware's, which it seemingly could have used for attorney discipline, but the court instead chose to discipline the attorney for violating the lawyer's oath.

The majority of the time when the oath is mentioned in attorney disciplinary proceedings, it is mentioned along with the rules of professional conduct and sometimes other ethical guidance.<sup>147</sup> For example, the Florida Supreme Court in *In re Code for Resolving Professionalism Complaints* stated that

Members of The Florida Bar shall not engage in unprofessional conduct. 'Unprofessional conduct' means substantial or repeated violations of the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, The Rules Regulating The Florida Bar, or the decisions of The Florida Supreme Court. Unprofessional conduct, as defined above, in many instances will constitute a violation of one or more of the Rules of Professional Conduct.<sup>148</sup>

In this case, the oath was lumped in together with all the ethical guidance that could apply and there are no specific provisions of the oath differentiated from the obligations in the Rules of Professional Conduct or otherwise. This seems to be the epitome of "throwing the book" at the respondent. It appears to be a reminder by the court of all of the various professional obligations undertaken when an attorney is admitted to practice law.

States, therefore, enforce lawyer's oaths for attorney disciplinary purposes primarily in conjunction with and indistinguishable from the rules of professional conduct, and only sometimes when the rules of professional conduct do not quite reach or for reasons unknown. This is not particularly helpful for explaining what amendments to lawyer's oaths should look

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<sup>147</sup> See e.g., *Att'y Grievance Comm'n of Maryland v. O'Neill*, 477 Md. 632, 670–71, 271 A.3d 792, 815 (2022); *Matter of Disc. of Swier*, 939 N.W.2d 855, 869 (S.D. 2020); *Joiner v. Joiner*, 2005 WL 2805566 (Tenn. Ct. App. 2005); *Matter of Gardine*, 392 P.3d 89, 97 (2017); *State ex rel. Counsel for Discipline v. Sipple*, 265 Neb. 890, 891, 660 N.W.2d 502, 505 (2003); *White v. Priest*, 73 S.W.3d 572, 581 (Ark. 2002); *In re Disciplinary Proceedings Against Huddleston*, 137 Wash.2d 560 (Wash., 1999); *In re Breslow*, 124 N.J. 386, 388-89, 590 A.2d 1185, 1186-87 (1991).

<sup>148</sup> 116 So.3d 280 (Fla. 2013).

like in states that enforce the lawyer's oath for attorney disciplinary purposes, except to note that lawyer's oaths are enforceable in many states and that it will continue to be important to clearly differentiate aspirational language in the lawyer's oath so that it is not confused with language that could be enforced. Part V. below discusses human rights as a source of aspirational language to be considered for amendments to lawyer's oaths and will help shed light on this question of differentiated aspirational language from language that could be enforced.

## V. How to Use Human Rights Norms to Update Lawyer's Oaths

Human rights norms can provide attorneys with ethical aspiration and guidance.<sup>149</sup>

Human rights are not limited to laws and legal systems; human rights can also be tools, aspirations, represent particular norms, and provide guidance in decision making.<sup>150</sup> Human rights also represent a vision of the future, a future in which one would want to live and work.<sup>151</sup>

Human rights are centered on the values of respect for human dignity<sup>152</sup> and non-discrimination.<sup>153</sup> In addition, self-determination,<sup>154</sup> privacy,<sup>155</sup> and accountability,<sup>156</sup> and participation,<sup>157</sup> have been identified by lawyers and scholars as human rights norms that can

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<sup>149</sup> See Bartlett, *supra* note 20 at 583-88; Martha F. Davis, *Human Rights and the Model Rules of Professional Conduct: Intersection and Integration*, 42 COLUM. HUM. RTS. L. REV. 157, 180 (2010).

<sup>150</sup> Bartlett, *supra* note 20 at 583-88. See also e.g., U.N. Charter art. 1, ¶ 3; Davis, *supra* note 149 at 180.

<sup>151</sup> Bartlett, *supra* note 20 at 584.

<sup>152</sup> See Davis, *supra* note 149, at 157 (quoting David Luban, *Legal Ethics and Human Dignity* 65-95 (2007)). See also Risa Kaufman, "By Some Other Means": *Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971, 2007 (2012) ("A common set of standards comprise the concept of human rights: dignity, justice, fairness, and equality."); G.A. Res. 217 (III) A, Universal Declaration of Human Rights (UDHR), Art. 7 (Dec. 10, 1948).

<sup>153</sup> Davis, *supra* note 149 at 178.

<sup>154</sup> See International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3 1976) ("All peoples have the right of self-determination.").

<sup>155</sup> Bartlett, *supra* note 20 at 589. See also Mark S. Ellis, *Developing a Global Program for Enhancing Accountability: Key Ethical Tenets for the Legal Profession in the 21st Century*, 54 S.C. L. REV. 1011, 1021 (2003) (discussing the principle of confidentiality as a universal principle of ethical behavior in the legal profession both in the United States and abroad).

<sup>156</sup> See Bartlett, *supra* note 20 at 589; UDHR, *supra* note 152, at art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.").

<sup>157</sup> *Id.*



help guide an attorney’s work and representation of clients. Additionally, there are important human rights norms related to building an inclusive legal profession including cultural sensitivity,<sup>158</sup> accountability for human rights violations,<sup>159</sup> and access to justice.<sup>160</sup>

Professor Martha F. Davis has explained that human rights “are relevant to legal ethics both as means, informing the contours of lawyer-client relationships, and as ends, informing legal goals and decision making.”<sup>161</sup> Attorneys drawing on human rights for aspiration will find guidance for navigating ethical dilemmas in law practice and can provide moral aspirational for the legal profession.<sup>162</sup> As I have noted elsewhere, the emphasis within human rights is on respect for people’s rights, as opposed to legal ethics which focus on the lawyer’s responsibilities.<sup>163</sup> It therefore makes a great deal of sense to draw on human rights for aspirational language to be included in lawyer’s oaths.

Drawing on human rights norms to update lawyer’s oaths also makes sense in this increasingly globalized world. A growing number of law students and lawyers are familiar with

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<sup>158</sup> See UDHR, *supra* note 152 at art. 27; ICESCR, *supra* note 153 at pmb1.

<sup>159</sup> See UDHR, *supra* note 152, at art. 8 (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”); Organization of American States, American Convention on Human Rights, art. 25, Nov. 22 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”).

<sup>160</sup> American Convention on Human Rights, *id.* at art. 25; Martha F. Davis, Risa Kaufman, and Heidi M. Wegleitner, *The Right to Adequate Housing in the United States: The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel*, 45 COLUM. HUMAN RIGHTS L. REV. 772, 777 (2014) (discussing access to justice as a human right, specifically stating that “Legal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system as a whole, and is critical to safeguarding other human rights...”).

<sup>161</sup> See Davis, *supra* note 149 at 176; Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. POVERTY L. & POL’Y 337, 384 (2011) (describing a proposal by a law student in the Columbia Human Rights Clinic that suggests adopting eleven principles to guide the ethical behavior of international human rights lawyers).

<sup>162</sup> See Bartlett, *supra* note 20 at 583-88

<sup>163</sup> See Bartlett, *supra* note 20 at 588.

international law and human rights,<sup>164</sup> and so much of legal practice today is transnational.<sup>165</sup> In addition, some domestic laws in the United States are increasingly influenced by human rights.<sup>166</sup> Given the globalized nature of law practice in the United States, legal ethics—and lawyer’s oaths in particular—should not stand out as separate from human rights.

No lawyer’s oath in the United States currently contains the words “human rights.” However, a few lawyer’s oaths come close. A handful of lawyer’s oaths that require attorneys to pledge to maintain the dignity of the profession,<sup>167</sup> maintain the dignity of the legal system,<sup>168</sup> or to conduct themselves with dignity.<sup>169</sup> The Ohio, Colorado, and West Virginia lawyer’s oaths stand out by specifically requiring a promise to respect *all* persons.<sup>170</sup> Similarly, the Hawaii

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<sup>164</sup> See Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 507 (2003); Davis, *supra* note 149, at 174; Bettinger-Lopez et al., *supra* note 161 at 337. In the past, Georgetown Law even required that first year students take an international law course. See Farida Ali, *Globalizing the U.S. Law School Curriculum: How Should Legal Educators Respond?*, 41 INT’L J. LEGAL INFO. 249, 266 (2013).

<sup>165</sup> Transnational law was famously defined by Philip Jessup. PHILIP C. JESSUP, TRANSNATIONAL LAW 2 (1956) (“all law which regulates actions or events that transcend national frontiers...”). See Harold Hongju Koh, *Integrating Transnational Legal Perspectives Into the First Year Curriculum: Why Transnational Law Matters*, 24 PENN ST. INT’L L. REV. 745, 750 (2006) (arguing that “transnational law will loom so large in our future”); STEPHEN BREYER, THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES (2015) (discussing cases before the Supreme Court of the United States that increasingly consider foreign activities and international law).

<sup>166</sup> See Tamar Ezer, *Localizing Human Rights in Cities*, S. CAL. REV. L. & SOC. JUST. 68 (2022) (“...cities throughout the world have espoused international human rights in various forms. This development has also caught on in the United States with close to a dozen self-designated human rights cities...”). See also I. INDIA THUSI ET AL., HUMAN RIGHTS IN STATE COURTS 5–6, 47 (2016), <https://www.northeastern.edu/law/pdfs/academics/phrge/state-courts-2016.pdf> (reviewing U.S. state court decisions and Attorneys General opinions interpreting human rights treaties, laws, and standards).

<sup>167</sup> Alaska and Montana require attorneys to pledge to maintain the dignity of the profession. AK., *supra* note 8; MT., *supra* note 8.

<sup>168</sup> The South Carolina lawyer’s oath requires lawyers to maintain the dignity of the legal system. S.C., *supra* note 80.

<sup>169</sup> The California, Hawaii, Missouri and Ohio lawyer’s oaths require attorneys to conduct themselves with dignity. See CA. *supra* note 11; HAW. *supra* note 8; MO., *supra* note 8; OH., *supra* note 8.

<sup>170</sup> The Colorado lawyer’s oath states, in part, “[...] I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty.” CO., *supra* note 8. The Ohio lawyer’s oath states, in part, “[...] I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons...” OH., *supra* note 8. The West Virginia lawyer’s oath states, in part, “I will conduct myself with integrity, dignity and civility and show respect toward judges, court staff, clients, fellow professionals and all other persons.” W.V., *supra* note 10.

lawyer's oath includes a pledge to give "due consideration to the legal needs of those without access to justice."<sup>171</sup>

Globally, there are lawyer's oaths which include human rights and can serve as models.

For example, the Oath of an Advocate from the country of Georgia provides (in its entirety):

I swear to be loyal to the ideas of justice, carry out an advocate's duties in good faith, and protect the Constitution and the laws of Georgia, the code of professional ethics of advocates, and the human rights and freedoms!"<sup>172</sup>

Lawyer's oaths in the United States could include a similar pledge to uphold or protect human rights, which would, in turn, evoke a broad swath of ethical principles.<sup>173</sup>

Given that some U.S. states may bristle at a pledge to uphold human rights,<sup>174</sup> another suggestion for updating lawyer's oaths would be to include human rights norms without referring directly to human rights. For example, the oath taken by lawyers in France states (in its entirety):

I swear, as a lawyer, to perform my duties with dignity, conscience, independence, integrity, and humanity.<sup>175</sup>

This brief French oath puts respect for dignity and humanity, core human rights norms, at the center of the lawyer's professional duties. This is also not too far afield from the new pledge in the West Virginia lawyer's oath to "conduct myself with integrity, dignity and civility."<sup>176</sup> Other states should be open to doing the same.

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<sup>171</sup> HAW., *supra* note 8.

<sup>172</sup> The Council of Bars and Law Societies of Europe (CCBE) has translated the Georgia Oath of an Advocate into English. See The Council of Bars and Law Societies of Europe (CCBE), National Laws on the Bars, Georgia, The Law of Georgia on Advocates, Oath of an Advocate, Article 211 (17.11.2009 N 2040), [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/National\\_Regulations/National\\_Laws\\_on\\_the\\_Bars/EN\\_Georgia\\_The-Law-of-Georgia-on-Advocates.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Georgia_The-Law-of-Georgia-on-Advocates.pdf) (emphasis added). The Georgia oath also stands out as including an exclamation point, a good idea to emphasize the excitement that should be brought about by taking the oath. See *id.*

<sup>173</sup> Davis, *supra* note 149 at 183.

<sup>174</sup> For years there has been an anti-international law movement a foot in the United States. See e.g., Martha F. Davis & Johanna Kalb, *Oklahoma State Question 755 and An Analysis of Anti-International Law Initiatives*, AM. CONST. SOC. ISS. BR. 1-2 (Jan. 2011), [https://www.acslaw.org/wp-content/uploads/2018/04/davis\\_and\\_kalb\\_anti-international\\_law.pdf](https://www.acslaw.org/wp-content/uploads/2018/04/davis_and_kalb_anti-international_law.pdf).

<sup>175</sup> Conseil National des Barreaux, Les Avocats, The legal profession in France, Professional Regulations – Obligations, <https://www.cnb.avocat.fr/en/professional-regulations-obligations>.

<sup>176</sup> W.V., *supra* note 10.

Thus, human rights can and do provide a source for aspirational language to be used when updating lawyer’s oaths. Human rights updates to lawyer’s oaths take various forms, as illustrated further in Section VI. below. It is clear, however, that lawyer’s oaths updated with aspirational human rights language can be a useful tool to build a dignified, respectful, and inclusive legal profession.

## VI. Proposed Human Rights Updates to Lawyer’s Oaths

There are many possibilities for updates to lawyer’s oaths. Some oaths could be impactful with only minor updates, the addition or subtraction of just a word or two. Other oaths should be completely overhauled to achieve relevancy and accessibility for new attorneys. This section provides proposals for minor update suggestions to the Ohio, Missouri, and California lawyer’s oaths, and a model human rights lawyer’s oath that could entirely replace some outdated lawyer’s oaths.

The proposals for updating lawyer’s oaths offered here focus on making the oaths more accessible and impactful as tools for promoting professionalism and legal ethics—to build a dignified, respectful, and inclusive legal profession. To make oaths more accessible and impactful, the updates draw on human rights norms and focus on including: 1) simply, direct, and modern language; 2) a promise to abide by the rules of professional conduct; 3) an emphasis on the lawyer’s role as a public citizen.

First, updates to make lawyer’s oaths more accessible should focus on simple, direct, and modern language.<sup>177</sup> For example, “I promise” should be used instead of “I affirm” or “I swear”.<sup>178</sup> All archaic language such as “lucre” and “duel” should be removed from lawyer’s

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<sup>177</sup> See Section III, *infra*.

<sup>178</sup> See *id*.

oaths<sup>179</sup> and all gender-specific language, such as “delay no man”, should be removed from lawyer’s oaths.

Second, to make a lawyer’s oath more impactful, all lawyer’s oaths should include a promise to abide by the rules of professional conduct. Adding a promise to abide by the rules of professional conduct seemingly negates the need to highlight specific ethical rules, such as due diligence or confidentiality. Many current lawyer’s oaths emphasize only one or two ethical rules, therefore diminishing the importance of the other rules. In addition, a promise to uphold all the rules of professional conduct, and not just specific rules, allows the lawyer’s oath to instead focus on aspirational ethical guidance. Including human rights in lawyer’s oaths, such as non-discrimination, respect for all persons, and access to justice, would accomplish this goal of focusing on aspirational ethical guidance.

Third, language emphasizing the lawyer’s role as a public citizen with a special responsibility for the quality of justice, should be prioritized. Adding in promises to give consideration to access to justice for all and/or to improve the law and legal systems, gives newly admitted lawyers specific aspirational goals. This goal setting language can not only provide guidance and help attorneys strive for high ethical aspiration, it can also emphasize the importance of reflection in their work and for the legal profession as a whole.

Below, proposals for updates to the Ohio, Missouri, and California lawyer’s oaths are discussed and explained. Enforceability and other concerns are also addressed in context. The proposed updates steer away from directly mentioning human rights and instead pull human rights language from other states’ lawyer’s oaths, to make the updates as friendly as possible for

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<sup>179</sup> Connecticut replaced the word “lucre” with “gain” in its lawyer’s oath. *See* CT., *supra* note 7. South Carolina replaced the word “lucre” with “profit” in its lawyer’s oath. *See* S.C., *supra* note 80.

the state bar associations, supreme court committees, and others in charge of drafting and enacting updates to lawyer's oaths.

*a. Proposed Amendments to the Ohio Lawyer's Oath*

The Ohio lawyer's oath is probably the best example of a lawyer's oath in the United States that already includes many of the updates recommended by this article. New lawyers currently take the following oath in Ohio:

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.)<sup>180</sup>

The language in the Ohio lawyer's oath is already simple, direct, and modern. The language in this oath is also gender neutral and already requires a pledge to abide by the rules of professional conduct and to show respect towards all other persons. The only updates left are to take out the reference to the constitutions, add in a promise instead of swearing or affirming the oath, and emphasize the lawyer's role as a public citizen. Therefore, the proposed updated Ohio lawyer's oath would be refined to state:

*I promise to abide by the Ohio Rules of Professional Conduct. I will strive to conduct myself with dignity and show respect toward judges, court staff, clients, fellow professionals, and all other persons. I will give due consideration to safeguarding fair, equal, and meaningful access to justice for all.*

This updated version of the Ohio lawyer's oath is very similar to the current Ohio oath and the proposed updated California lawyer's oath below. The first sentence of the proposed updated Ohio lawyer's oath replaces the words "(swear or affirm)" with a "promise." The phrase

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<sup>180</sup> OH., *supra* note 8.

“[i]n my capacity as an attorney and officer of the Court” has been removed from the second sentence, as that limitation could be interpreted to mean it requires attorneys to conduct themselves with dignity only when acting as an officer of the court and not at all times. The requirement to conduct oneself with “civility” has also been removed from that sentence in solidarity with arguments that requiring civility is an under-handed, racist way of trying to control people of color discussed in Section III above.

The word “strive” has been added to the second sentence, in an attempt to avoid enforceability issues, as the Ohio oath is enforceable for the purposes of attorney discipline.<sup>181</sup> The third and final sentence of the updated Ohio lawyer’s oath has been added to emphasize the right to access to justice and the lawyer’s role as a public citizen. That last sentence contains the same language that was proposed above as an addition to California’s lawyer’s oath. After these suggested amendments, the Ohio oath will read very much like the proposed amended California oath below, serving the purpose of highlighting the rules of professional conduct, aspirational ethical guidance, and the lawyer as public citizen.

*b. Proposed Amendments to the Missouri Lawyer’s Oath*

In Missouri, new attorneys to take this oath:

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,

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<sup>181</sup> See *Disciplinary Counsel v. Fowerbaugh*, 658 N.E.2d 237, 239 (Ohio 1995); Appendix A.

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.<sup>182</sup>

The current Missouri lawyer’s oath amounts to an almost perfect mixture of language from the California and Ohio oaths. The Missouri oath contains good language regarding dignity and already requires a pledge to abide by the rules of professional conduct. However, the Missouri oath contains some outdated language, such as “artifice”, and could use some aspirational ethical guidance.

The proposed updated Missouri lawyer’s oath would be simplified:

*I promise that I will show respect toward all others and will at all times conduct myself with dignity;*

*That I will at all times conduct myself in accordance with the Rules of Professional Conduct; and*

*I will give due consideration to safeguarding fair, equal, and meaningful access to justice for all.*

This updated version of the Missouri lawyer’s oath is almost identical to the proposed updated Ohio and California oaths, just slightly reordered based on the order of the current Missouri oath. The first sentence of the proposed updated Missouri oath replaces the words “I do solemnly swear” with “I promise” and the pledges upholding constitutions are removed. The second sentence of the current oath is amended to highlight showing respect for all others at all times, as opposed to respect just for courts and officers of the court. The current sentence regarding the rules of professional conduct is unaltered in this proposed updated Missouri oath. The last sentence mirrors the final sentence of the proposed updated Ohio oath, emphasizing the lawyer as public citizen. Because Missouri does not enforce its oath for the purposes of attorney discipline, the word “strive” is not used here. The result here is a much shorter oath; these

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<sup>182</sup> MO., *supra* note 8.



proposed amendments are meant to mirror language already adopted by other states and are meant to highlight what is most important in terms of ethics and professionalism during the ceremony of admission.

*c. Proposed Amendments to the California Lawyer's Oath*

Newly admitted attorneys to the California Bar currently take the following lawyer's oath:

I 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.<sup>183</sup>

The California oath already includes the core human rights norm of respect for dignity. In addition, this oath requires attorneys to act *at all times* with dignity, instead of limiting the requirement to act with dignity only to interactions with a subset of people, such as the judge or clients, as some other lawyer's oaths do. However, the California oath still limits the requirement to act with dignity to when the attorney is performing duties as an officer of the court, which does not fully embrace the lawyer as public citizen principle. There is also no mention in the current California oath of the rules of professional conduct, access to justice, or any special responsibility for the quality of justice.

Proposed amendments to the California oath, therefore, focus on adding a promise to abide by the rules of professional conduct and highlight the human rights norms of non-discrimination and access to justice. The proposed updated California lawyer's oath would read:

*I promise to abide by the California Rules of Professional Conduct. I will strive to conduct myself at all times with dignity and integrity. I will strive to show respect toward judges, court staff, clients, fellow professionals, and all other*

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<sup>183</sup> CA., *supra* note 11.

*persons. I will give due consideration to safeguarding fair, equal, and meaningful access to justice for all.*

The first sentence of this proposed oath replaces the words “swear (or affirm)” with a “promise”.

As discussed in Section III *supra*, a promise is simpler and more modern than swearing or affirming, and avoids possible religious discrimination. The sentence regarding support for the constitutions has also been removed in this proposed oath.

The first sentence adds the promise to abide by the rules of professional conduct, which should always be included in a lawyer’s oath. The second sentence focuses on ethical aspiration—dignity and integrity—drawn from human rights norms.

The third proposed sentence is the last sentence of the current oath, but with the limiting language of “as an officer of the court” removed. That limitation could be interpreted to mean it requires you to conduct yourself with dignity only when acting as an officer of the court, instead of at all times. If professionalism and high ethical aspiration are goals, it would be best for attorneys to strive to conduct themselves with dignity at all times, as opposed to just when carrying out duties as an attorney.

The word “strive” is added to the second and third sentences to indicate these are aspirational provisions, and not meant to be enforced, taking into consideration that the California oath is enforceable by statute.<sup>184</sup> The fourth proposed sentence emphasizes respect for all persons and draws on language contained in the current Ohio, Colorado, and West Virginia lawyer’s oaths.

The fifth and last sentence proposed for the updated California lawyer’s oath emphasizes the right to access to justice and the lawyer’s role as a public citizen. This last sentence is close

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<sup>184</sup> See Appendix A; CA., *supra* note 11.

to the language in Hawaii’s Oath requiring a promise to give “ due consideration to the legal needs of those without access to justice”.<sup>185</sup> However this language is also borrowed from an article by Professor Martha F. Davis and others discussing access to justice as a human right, stating that “[l]egal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system as a whole, and is critical to safeguarding other human rights.”<sup>186</sup>

While California’s oath already contains more modern and direct language than many other lawyer’s oaths, these updates would make the oath even more accessible and impactful.

*d. Proposed Model Human Rights Lawyer’s Oath*

While the proposed updated lawyer’s oaths above draw on human rights norms, those proposed oaths do not directly reference human rights. The model human rights lawyer’s oath offered below references human rights directly, giving jurisdictions that have already embraced human rights in other contexts the option of going above and beyond. The proposed model human rights lawyer’s oath reads as follows:

*I promise to abide by the rules of professional conduct.*  
*I will strive to treat all persons with dignity and respect at all times.*  
*I promise to take action to ensure the full realization of human rights and fundamental freedoms for all.*<sup>187</sup>

This model human rights lawyer’s oath includes a promise to abide by the rules of professional conduct, just like the proposed updates to the California, Ohio, and Missouri oaths above. The second sentence of the model human rights oath centers the human rights norms of the rights to dignity and respect at all times for all persons.

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<sup>185</sup> See HAW., *supra* note 8.

<sup>186</sup> See Davis et al., *supra* note 160.

<sup>187</sup> Some of this language is taken from the United Nations Stand up for Human Rights Pledge. See United Nations Association, United States, Stand Up for Human Rights Pledge, <https://unausa.org/human-rights/take-the-pledge/>.

The last sentence includes a promise to take action to protect and enforce human rights for all. This last sentence is a human rights version of the lawyer as public citizen provisions included in the proposed updates to the California, Ohio, and Missouri oaths. Instead of invoking the Colorado and Hawaii oath language, the model human rights lawyer's oath cites directly to human rights and urges newly admitted attorneys to embrace ambitious ethical aspirations. This model human rights lawyer's oath is short, but still includes simple, direct, modern language, a promise to abide by the rules of professional conduct, and emphasizes the lawyer's role as a public citizen.

## VII. Conclusion

Lawyer's oaths are an important tool for promoting professionalism and legal ethics. Yet, many lawyer's oaths used in the United States are problematic and include irrelevant, inappropriate, discriminatory, and obsolete language and terminology. In addition, many lawyer's oaths have not been amended for hundreds of years. It is past time to update lawyer's oaths. When considering updates to lawyer's oaths, the focus should be on simple, direct, and modern language. In addition, ethical aspiration and guidance, which may be drawn from human rights norms, should also be included. This article can serve as a guide for jurisdictions considering updates to lawyer's oaths.

Appendix A: Lawyer's Oath Chart (50 States + Washington, D.C.)

Enforceable by Statute	15	DC, WI, WA, SD, SC, NM, NE, MT, MN, KS, IA, ID, FL, CA, AZ
Enforceable (but not by statute)	12	UT, PA, OR, OH, NH, MA, ME, IL, DE, CT, CO, AR
Reference (but oath alone not enforced for attorney discipline)	17	WY, WV, VT, TN, RI, OK, NY, NV, NJ, ND, MS, MI, MD, LA, KY, IN, GA
No Reference (to oath violations used for attorney discipline)	7	VA, TX, NC, MO, HI, AL, AK

State	Status	Lawyer's Oath	Relevant Text/Source(s)
Alabama	No Reference	<a href="#">AL CODE § 34-3-15</a>	– No reference to state lawyer's oath violations.
Alaska	No Reference	<a href="#">AK BAR R. 5(D) § 3</a>	– No reference to state lawyer's oath violations.
Arizona	Enforceable by Statute	<a href="#">AZ SUP. CT. R. 41</a>	<ul style="list-style-type: none"> <li>– ARIZ. SUP. CT. R. 41(g)</li> <li>– ARIZ. SUP. CT. R. 54(i)</li> <li>– ARIZ. SUP. CT. R. 31(a)(2)(E)</li> <li>– <a href="#">Matter of Martinez, 462 P.3d 36,43 (Ariz. 2020)</a> <ul style="list-style-type: none"> <li>○ “The Bar contends that the panel erred by characterizing Rule 41(g) as aspirational. Although we do not interpret the panel's decision as applying an incorrect standard, we clarify that because unprofessional conduct is actionable under Rule 41(g), the rule is not merely aspirational.”</li> </ul> </li> </ul>
Arkansas	Enforceable	<a href="#">AR R. ADMIS. R. 7, G</a>	<ul style="list-style-type: none"> <li>– <a href="#">Wernimont v. State ex rel. Little Rock B. Ass'n, 142 S.W. 194, 196 (Ark. 1911)</a> <ul style="list-style-type: none"> <li>○ “The purpose of the proceedings for suspension and disbarment is to protect the court and the public from attorneys who, disregarding their oath of office, pervert and abuse those privileges which they have obtained by the high office they have secured from the court.” (emphasis added).</li> </ul> </li> <li>– <a href="#">White v. Priest, 73 S.W.3d 572, 581 (Ark. 2002)</a> <ul style="list-style-type: none"> <li>○ “We cite the foregoing examples of the general tone of disrespect for the code of ethics and Mr. Stilley's <b>breach of his oath of office</b> as an attorney-at-law... Because this matter implicates a breach of the Model Rules of Professional Conduct, we refer Mr. Stilley to the Professional Conduct Committee and request the Committee to take whatever action it believes his actions warrant under the Model Rules of Professional Conduct.” (emphasis added).</li> </ul> </li> </ul>

<p><b>California</b></p>	<p>Enforceable by Statute</p>	<p><a href="#">California Attorney's Oath</a></p>	<ul style="list-style-type: none"> <li>- CA BUS. &amp; PROF. §§ 6068, 6103</li> <li>- CA ST. BAR P. STAN. 2.12</li> <li>- <a href="#">Ramirez v. State Bar, 28 Cal. 3d 402, 619 P.2d 399 (1980)</a> <ul style="list-style-type: none"> <li>o "It appears clear petitioner <b>has violated his oath and duties as an attorney and is subject to discipline therefor.</b> In support of the recommended discipline, this court has heretofore disciplined attorneys for violating their oath and duties in making unjustified and demeaning allegations against judicial officers." (emphasis added).</li> </ul> </li> </ul>
<p><b>Colorado</b></p>	<p>Enforceable</p>	<p><a href="#">Colorado Supreme Court Oath of Admission</a></p>	<ul style="list-style-type: none"> <li>- <a href="#">People v. Selby, 156 Colo. 17, 19–20, 396 P.2d 598, 599 (1964)</a> <ul style="list-style-type: none"> <li>o "Lawyers should ever remember that it is their duty to act with dignity, restraint and fairness in the hallowed process of seeking justice through our judicial system. Those who forget, or deliberately violate, this injunction <b>violate their oath and obligation as lawyers</b> and officers of the Court. Mr. Selby... You are solemnly warned that repetition of these violations or any other breach of your duty as a lawyer will be sufficient cause for more severe disciplinary action..." (emphasis added).</li> </ul> </li> <li>- <a href="#">People v. Wallin, 621 P.2d 330 (Colo. 1981)</a> <ul style="list-style-type: none"> <li>o "Mr. Wallin, you stand before the Supreme Court of Colorado to be publicly <b>censured for violating your oath as an attorney.</b>" (emphasis added).</li> </ul> </li> </ul>
<p><b>Connecticut</b></p>	<p>Enforceable</p>	<p><a href="#">CONN. GEN. STAT. ANN. § 1-25</a></p>	<ul style="list-style-type: none"> <li>- <a href="#">Grievance Comm. v. Woolfson, 2 Conn. Supp. 122 (Super. Ct. 1935)</a> <ul style="list-style-type: none"> <li>o "The inquiry here is whether Woolfson has committed any unprofessional acts in <b>violation of his oath of office as an attorney</b> [...] His offense may be characterized as "sharp practice", a total lack of comprehension of the duty of a lawyer to the public in general, a failure to possess a full realization of the obligation owed by the attorney to the Court, a willingness to walk so close to the line separating right from wrong that the pressure of self-interest may temporarily cause a slipping to the side of wrong. The said Ralph G. Woolfson is suspended from the practice of law..." (emphasis added).</li> </ul> </li> <li>- <a href="#">Disc. Counsel v. Johnson, 2021 Conn. Super. Lexis 1440, 2021 WL 4295352 (Conn. Super. Aug. 30, 2021)</a> <ul style="list-style-type: none"> <li>o "The Respondent's conduct over a three-year period was in <b>violation of his oath as an attorney</b>, disrespectful to the trial court, unfair to and expensive for the other parties, and incompatible with well-established Connecticut law. The Respondent's frivolous and baseless pleadings confused the issues and obscured the true facts, delayed final resolution of both lawsuits, and significantly increased the costs to the opposing parties. In the face of such misconduct, this court is duty-bound to impose sanctions." (emphasis added).</li> </ul> </li> </ul>
<p><b>Delaware</b></p>	<p>Enforceable</p>	<p><a href="#">DEL. SUP. CT. R. 54</a></p>	<ul style="list-style-type: none"> <li>- <a href="#">In re Davis, 43 A.3d 856, 865–66 (Del. 2012)</a> <ul style="list-style-type: none"> <li>o "Notwithstanding this Court's adoption of the Delaware Lawyers' Rules of Professional Conduct, the oath remains the primary statement of core ethical values for Delaware lawyers. Two fundamental ethical principles in the Delaware oath are to act with fidelity to the Court and to use no falsehood. The</li> </ul> </li> </ul>

			record reflects that Davis violated these fundamental ethical principles before and during his suspension, and thereafter, when he sought reinstatement.”
<b>Florida</b>	Enforceable by Statute	<a href="#">Florida Bar Oath of Admission</a>	<ul style="list-style-type: none"> <li>– FL. ST. BAR R. 3-4.7</li> <li>– <a href="#">In re Code for Resolving Professionalism Complaints, 116 So.3d 280 (Fla.,2013)</a> <ul style="list-style-type: none"> <li>○ “Members of The Florida Bar shall not engage in unprofessional conduct. "Unprofessional conduct" means substantial or repeated violations of the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, The Rules Regulating The Florida Bar, or the decisions of The Florida Supreme Court. Unprofessional conduct, as defined above, in many instances will constitute a violation of one or more of the Rules of Professional Conduct.”</li> </ul> </li> </ul>
<b>Georgia</b>	Reference	<a href="#">GA R. ADMIS. PT. B, §16</a>	<ul style="list-style-type: none"> <li>– <a href="#">Williford v. State, 56 Ga. App. 840, 194 S.E. 384, 388 (1937)</a> <ul style="list-style-type: none"> <li>○ “An attorney <b>is guilty of misconduct whenever he so acts as to be unworthy of the trust and confidence involved in his official oath</b>, and is found wanting in the honesty and integrity which must characterize members of the bar in the performance of their professional duties...This may involve misconduct towards the court...misconduct towards a fellow attorney,... or moral delinquency showing the attorney to be unfit to exercise the privilege of practicing before the courts.”</li> </ul> </li> </ul>
<b>Hawaii</b>	No Reference	<a href="#">HAW. R. SUP. CT. 15</a>	<ul style="list-style-type: none"> <li>– No reference to state lawyer’s oath violations.</li> </ul>
<b>Idaho</b>	Enforceable by Statute	<a href="#">ID BAR COMM. R. 220</a>	<ul style="list-style-type: none"> <li>– IDAHO CODE ANN. § 3-301_(replaced C.S. § 6578 in 1929)</li> <li>– <a href="#">In re Downs, 46 Idaho 464, 268 P. 17, 17 (1928)</a> <ul style="list-style-type: none"> <li>○ “...an <b>attorney may be disbarred for “any violation of the oath</b> taken by him or his duties as such attorney and counselor.” These duties are prescribed by C. S. § 6572, among others, to support the laws of this state and maintain the respect due to the courts of justice and judicial officers. C. S. § 6580, authorizes proceedings by this court for violation of C. S. § 6578, on matters within its knowledge or upon the information of another.” (emphasis added).</li> </ul> </li> </ul>
<b>Illinois</b>	Enforceable	<a href="#">705 ILL. COMP. STAT. ANN. 205/4</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Stillo, 68 Ill.2d 49 (Ill. 1977).</a> <ul style="list-style-type: none"> <li>○ “When a lawyer, further, converts a client's funds to his own personal use he commits an act involving moral turpitude, and, in the absence of mitigating circumstances, such conversion is a gross <b>violation of the attorney's oath, calling for the attorney's disbarment.</b>” (emphasis added).</li> </ul> </li> </ul>
<b>Indiana</b>	Reference	<a href="#">IND. R. CT. ADMIS. DISC. R. 22</a>	<ul style="list-style-type: none"> <li>– <a href="#">Matter of Helman, 640 N.E.2d 1063, 1065 (Ind. 1994).</a> <ul style="list-style-type: none"> <li>○ “Every individual who has taken this Court's oath of attorneys should be aware that lying is, at best, an ethically irresponsible practice.”</li> </ul> </li> </ul>
<b>Iowa</b>	Enforceable by Statute	<a href="#">Iowa Lawyer’s Oath</a>	<ul style="list-style-type: none"> <li>– IA S. CT. DISC. BD. R. CH. 35.4(6).</li> </ul>
<b>Kansas</b>	Enforceable by Statute	<a href="#">KS ADMIS. R. 720 (West)</a>	<ul style="list-style-type: none"> <li>– KAN. STAT. ANN. § R 203</li> <li>– <a href="#">Matter of Giardine, 392 P.3d 89, 97 (2017)</a> <ul style="list-style-type: none"> <li>○ “... acts or omissions by the attorney which <b>violate the attorney's oath of office</b> or the disciplinary rules of the supreme court shall constitute misconduct</li> </ul> </li> </ul>

			and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship." (emphasis added).
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<b>Kentucky</b>	Reference	<a href="#">KY. CONST. § 228</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Wells, 168 S.W.2d 730, 732 (1943)</a> <ul style="list-style-type: none"> <li>○ “An attorney is guilty of “misconduct” sufficient to justify his suspension or disbarment whenever he so acts as to be unworthy of the trust and confidence involved in his official oath and is found to be wanting in that honesty and integrity which must characterize members of the bar in the performance of their professional duties.”</li> </ul> </li> </ul>
<b>Louisiana</b>	Reference	<a href="#">Louisiana Lawyer’s Oath</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Morphis, 831 So. 2d 934, 940 (La. 2002)</a> <ul style="list-style-type: none"> <li>○ “High standards of honesty and righteousness have been erected for those engaged in the legal profession and all members of it are required to take an oath to uphold these ideals upon their admission to the Bar...Respondent has disregarded and ignored his obligation to uphold the ideals that he assumed when he took the oath as a member of the bar of this state. He has used his law license not to foster the high standards of the profession, but as a license to steal from the citizens of Louisiana. This court cannot and will not tolerate such conduct. Respondent must be permanently disbarred.”</li> </ul> </li> </ul>
<b>Maine</b>	Enforceable	<a href="#">ME. REV. STAT. TIT. 4, § 806</a>	<ul style="list-style-type: none"> <li>– <a href="#">Strout v. Proctor, 71 Me. 288, 291 (1880)</a> <ul style="list-style-type: none"> <li>○ “...respondent, prostituting to corrupt uses his professional standing and influence, and in violation of his official oath, by means of false pretenses and false advice to Mrs. Haskell, whom he knew was trusting him as a lawyer and a friend, did all in his power to consummate a gross wrong and fraud upon her, of which he himself, directly or indirectly, was to reap the benefit...requires the removal of Daniel W. Proctor from the office of attorney and counselor of this court.”</li> </ul> </li> <li>– <a href="#">In re Dineen, 380 A.2d 603, 604 (Me. 1977)</a> <ul style="list-style-type: none"> <li>○ “The “Attorney's Oath”, required of all Maine attorneys, includes several provisions against which an attorney's actions may be properly measured.”</li> </ul> </li> </ul>
<b>Maryland</b>	Reference	<a href="#">MD. CODE ANN., BUS. OCC. &amp; PROF. § 10-212</a>	<ul style="list-style-type: none"> <li>– <a href="#">Att’y Grievance Comm’n of Maryland v. O’Neill, 477 Md. 632, 670–71, 271 A.3d 792, 815 (2022)</a> <ul style="list-style-type: none"> <li>○ “By violating several rules of professional responsibility, Respondent did not fairly and honorably discharge the ethical duties, embodied in the oath, and required by all members of the Maryland bar. In the aggregate, Respondent’s conduct warrants the ultimate sanction of disbarment.”</li> </ul> </li> </ul>
<b>Massachusetts</b>	Enforceable	<a href="#">MASS. GEN. LAWS ANN. CH. 221, § 38</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Balliro, 453 Mass. 75, 88–89, 899 N.E.2d 794, 804 (2009)</a> <ul style="list-style-type: none"> <li>○ “When the respondent was admitted as an attorney in this Commonwealth, she took an oath of office...in which she solemnly swore, among other things, that she would “do no falsehood, nor consent to the doing of any in court.”...Notwithstanding the substantial mitigating factors in this case, we cannot condone the actions of an attorney in giving false testimony under oath, irrespective of the circumstances. We conclude that the appropriate disciplinary sanction for the respondent’s misconduct is a six-month suspension from the practice of law.”</li> </ul> </li> <li>– <a href="#">In re Randall, 93 Mass. 473 (1865)</a></li> </ul>

			<ul style="list-style-type: none"> <li>○ “The more reasonable inference is that the power of removal was given, not as a mode of inflicting a punishment for an offence, but in order to enable the courts to prevent the scandal and reproach which would be occasioned to the administration of the law, by the continuance in office of those who had violated their oaths or abused their trust, and to take away from such persons the power and opportunity of injuring others by further acts of misconduct and malpractice.”</li> </ul>
<b>Michigan</b>	Reference	<a href="#">MI R. BAR R. 15, §3</a>	<ul style="list-style-type: none"> <li>– <a href="#">Grievance Adm'r v. Fieger, 476 Mich. 231, 245, 719 N.W.2d 123, 134 (2006)</a></li> <li>○ “This oath provides that the lawyer will, upon being accorded the privileges provided by membership in the bar, (1) maintain the respect due to courts of justice and judicial officers, (2) abstain from all offensive personality, and (3) conduct himself or herself personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in Michigan.”</li> </ul>
<b>Minnesota</b>	Enforceable by Statute	<a href="#">MINN. STAT. ANN. § 358.07, §9</a>	<ul style="list-style-type: none"> <li>– MN STAT. ANN. § 481.15</li> <li>– <a href="#">In re Kennedy, 217 Minn. 600, 600, 15 N.W.2d 26, 26 (1944)</a></li> <li>○ “Respondent's conduct clearly calls for censure and reprobation. It constitutes a wilful <b>violation of his oath and</b> of the duties imposed upon him as an attorney at law, justifying his removal or suspension...under § 481.15...It cannot be ignored.” (emphasis added).</li> </ul>
<b>Mississippi</b>	Reference	<a href="#">MISS. CODE. ANN. § 73-3-35</a>	<ul style="list-style-type: none"> <li>– <a href="#">Rogers v. Mississippi Bar, 731 So. 2d 1158, 1166 (Miss. 1999)</a></li> <li>○ “The Rules of Discipline for the Mississippi State Bar state that the grounds for discipline include “[a]cts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office or the Code of Professional Responsibility as now set forth or as hereafter amended, shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.”</li> </ul>
<b>Missouri</b>	No Reference	<a href="#">MO. BAR R. 8.15</a>	<ul style="list-style-type: none"> <li>– No reference to state lawyer’s oath violations.</li> </ul>
<b>Montana</b>	Enforceable by Statute	<a href="#">Written Oath of Admission to the Bar of the State of Montana</a>	<ul style="list-style-type: none"> <li>– MONT. CODE ANN. § 37-61-301</li> <li>– <a href="#">In re McCue, 80 Mont. 537, 261 P. 341, 347 (1927)</a></li> <li>○ “...disbarment for “willful disobedience or violation of an order of the court, violation of the oath taken by him, or of his duties as such attorney.” Clearly, it is the duty of an attorney to remit money collected to his client, and a willful omission to do so constitutes a violation of his duty and will subject the attorney to punishment where no deceit is practiced....”</li> </ul>
<b>Nebraska</b>	Enforceable by Statute	<a href="#">NE R. CT. § 3-128</a>	<ul style="list-style-type: none"> <li>– NEB. REV. STAT. ANN. § 7-104 (does not expressly provide for discipline when violation of lawyer oath occurs; however, case law seems to suggest Nebraska courts use it to enforce attorney conduct).</li> <li>– <a href="#">State ex rel. Couns. for Discipline, Nebraska Supreme Ct. v. Sipple, 265 Neb. 890, 660 N.W.2d 502 (2003)</a></li> </ul>

			<ul style="list-style-type: none"> <li>○ “Although the referee made no finding in this regard, we conclude that by virtue of respondent’s conduct, we find by clear and convincing...respondent <b>has violated the attorney’s oath of office</b>. See § 7–104.” (emphasis added).</li> </ul>
<b>Nevada</b>	Reference	<a href="#">NEV. SUP. CT. R. 73</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Raggio, 87 Nev. 369, 487 P.2d 499 (1971)</a></li> <li>○ “A member of the bar, however, stands in a different position by reason of his oath of office and the standards of conduct which he is sworn to uphold. Conformity with those standards has proven essential to the administration of justice in our courts.”</li> </ul>
<b>New Hampshire</b>	Enforceable	<a href="#">N.H. REV. STAT. ANN. § 311:6</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Silverstein’s Case, 108 N.H. 400, 401–02, 236 A.2d 488, 490 (1967)</a></li> <li>○ “... an attorney is an officer of the court whose oath binds him to do no falsehood...The defendant’s conduct was not of the high order which the public has the right to demand from members of the legal profession... Jerome L. Silverstein be suspended from the practice of law for a period of three months.”</li> <li>– <a href="#">Kalil’s Case, 773 A.2d 647, 648–49 (N.H. 2001)</a></li> <li>○ “Every attorney admitted to practice law in this State takes an oath.... The oath begins: “You solemnly swear or affirm that you will do no falsehood, nor consent that any be done in the court” [...] The respondent failed to honor this obligation. Not only did he act unprofessionally by attempting to intimidate a pro se litigant outside the courtroom, he abandoned his oath by lying about his conduct when questioned by the judge...the respondent is suspended from the practice of law for three months...”</li> </ul>
<b>New Jersey</b>	Reference	<a href="#">N.J. STAT. ANN. § 2A:13-1</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Breslow, 124 N.J. 386, 388-89, 590 A.2d 1185, 1186-87 (1991)</a></li> <li>○ “The most obvious difference, and the one that most clearly justifies differential treatment of the subjects of the two proceedings, is that at the time of his or her past delinquency, the bar applicant was not bound by the solemn oath taken by every attorney and by the strictures of our Rules of Professional Conduct, as every practicing lawyer is. That oath and those Rules cast a different light on otherwise-identical misconduct because the attorney, unlike the applicant, acts in contravention of standards to which he or she has knowingly and affirmatively acceded. The weight to be accorded proof of rehabilitation, then, varies, depending on whether the transgression occurs before or after admission and, beyond that, depending on the nature of the transgression itself.”</li> </ul>
<b>New Mexico</b>	Enforceable by Statute	<a href="#">NM ADMIS. BAR. R. 15-304</a>	<ul style="list-style-type: none"> <li>– N.M. STAT. ANN. § 36-2-18</li> </ul>
<b>New York</b>	Reference	<a href="#">N.Y. CONST. ART. XIII, § 1</a>	<ul style="list-style-type: none"> <li>– <a href="#">In re Nearing, 16 A.D.2d 516, 518, 229 N.Y.S.2d 567, 569 (1962)</a></li> <li>○ “...an appraisal of the character of the offender is the true guide, but the nature, seriousness and surrounding circumstances of his offense are most significant factors as indicia of what may be expected in the future. The attorney’s attitude toward the obligations and duties implicit in taking the oath of office as an attorney is probably the most decisive factor in reaching a determination.”</li> </ul>
<b>North Carolina</b>	No Reference	<a href="#">N.C. GEN. STAT. ANN. § 11-11</a>	<ul style="list-style-type: none"> <li>– No reference to state lawyer’s oath violations.</li> </ul>

North Dakota	Reference	<a href="#">N.D. CONST. ART. XI, § 4</a>	<ul style="list-style-type: none"> <li>- <a href="#">In re Crum, 215 N.W. 682, 683 (N.D. 1927)</a> <ul style="list-style-type: none"> <li>o Where attorney at issue was special assistant attorney general of the state of North Dakota, “[i]n a disbarment proceeding...such evidence is ample proof of conduct violative of the oath of office of the attorney and of a willful violation of the duties of an attorney at law.”</li> </ul> </li> </ul>
Ohio	Enforceable	<a href="#">OH ST. GOV. BAR. R. 1</a>	<ul style="list-style-type: none"> <li>- <a href="#">Disciplinary Counsel v. Fowerbaugh, 658 N.E.2d 237, 239 (Ohio 1995)</a> <ul style="list-style-type: none"> <li>o “A lawyer who engages in a material misrepresentation to a court or a pattern of dishonesty with a client violates, at a minimum, the lawyer's oath of office that he or she will not “knowingly employ or countenance any deception, falsehood, or fraud.” Gov.Bar R. I(8)(A) For the foregoing reasons, we order that respondent be suspended from the practice of law in the state of Ohio for six months.”</li> </ul> </li> </ul>
Oklahoma	Reference	<a href="#">OK ST. ADMIS. R. 1</a>	<ul style="list-style-type: none"> <li>- <a href="#">State B. Commn. v. Sullivan, 131 P. 703, 707 (Okla. 1912)</a> <ul style="list-style-type: none"> <li>o “The oath which an attorney is required to take before being permitted to practice law in the courts of this state is not simply to be obedient to the Constitution and laws of the state, but to maintain at all times the respect due the courts of justice and judicial officers ...and for a violation of these duties an attorney may be suspended or disbarred.” (this case was decided before Rules of Professional Conduct enacted in OK).</li> </ul> </li> </ul>
Oregon	Enforceable	<a href="#">Oath of Office for Admission to the Practice of Law in Oregon</a>	<ul style="list-style-type: none"> <li>- <a href="#">In re McKechnie, 214 Or. 531, 533, 330 P.2d 727, 728 (1958)</a> <ul style="list-style-type: none"> <li>o “The intentional violation of an Act designed to carry out the purposes of government itself, whether done with corrupt intent or not, conflicts with the moral duty of a citizen and most certainly violates the oath of an attorney taken to uphold the constitution and laws of the United States. The petitioner took such an oath and his violation of that oath subjects him to disciplinary action.”</li> </ul> </li> </ul>
Pennsylvania	Enforceable	<a href="#">42 PA. STAT. AND CONS. STAT. ANN. § 2522</a>	<ul style="list-style-type: none"> <li>- <a href="#">In re Schofield, 362 Pa. 201, 221, 66 A.2d 675, 685 (1949)</a> <ul style="list-style-type: none"> <li>o “We are unanimous in our conclusion that respondent's insubordination described above, constituted violation of his oath of office requiring punishment. The rule must therefore be made absolute. It is therefore ordered that respondent...appear for public reprimand and censure at the bar of his court...”</li> </ul> </li> <li>- <a href="#">In re Austin, 1835 WL 2736 (Pa. 1835)</a> <ul style="list-style-type: none"> <li>o “Expulsion may be proper, where there has been no contempt at all; as in cases of brutality, drunkenness, and the whole circle of infamous crimes...In fact the court may have recourse to both together, and there is no reason, therefore, why it should not be at liberty to proceed on the ground of unfitness, and waive the contempt. It is not doubted that any breach of the official oath is a valid cause, for proceeding for the former; for the man who <b>deliberately violates the sanctions of a lawful oath</b>, proves himself to be unworthy of further confidence; society has no other hold upon him.” (emphasis added).</li> </ul> </li> </ul>

<b>Rhode Island</b>	Reference	<a href="#">RI. SUP. CT. ART. II ADMIS. R. 8</a>	<ul style="list-style-type: none"> <li>- <a href="#">Carter v. Kamaras, 478 A.2d 991, 992 (R.I. 1984)</a> <ul style="list-style-type: none"> <li>o "... keeping in mind the obligation placed upon a lawyer at the time he takes his oath, we are of the opinion that the respondent's actions are of a type that bring disrepute to the legal profession...The respondent's conduct before the trial justice of the Family Court reflects upon his fitness to practice law and warrants the imposition of discipline."</li> </ul> </li> </ul>
<b>South Carolina</b>	Enforceable by Statute	<a href="#">SC. APP. CT. R. 402</a>	<ul style="list-style-type: none"> <li>- SC. APP. CT. R. 413, 7(a) (6)</li> <li>- <a href="#">In re Craig, 352 S.C. 8, 10, 572 S.E.2d 278, 279 (2002)</a> <ul style="list-style-type: none"> <li>o "Respondent has also violated the following... Rule 413...7(a)(6) (violating the Oath of Office taken upon admission to the practice of law)."</li> </ul> </li> </ul>
<b>South Dakota</b>	Enforceable by Statute	<a href="#">SD. STAT. ANN § 16-16-18</a>	<ul style="list-style-type: none"> <li>- SD. STAT. ANN § 16-19-32</li> <li>- <a href="#">In re Gorsuch, 76 S.D. 191, 199, 75 N.W.2d 644, 649 (1956)</a> <ul style="list-style-type: none"> <li>o "The purpose of the proceedings for suspension and disbarment is to protect the court and the public from attorneys who, disregarding their oath of office, pervert and abuse those privileges which they have obtained by the high office they have secured from the court."</li> </ul> </li> <li>- <a href="#">Matter of Disc. of Swier, 939 N.W.2d 855, 869 (S.D. 2020)</a> <ul style="list-style-type: none"> <li>o "Moreover, the statutory oath for admission to become a licensed attorney in South Dakota states... This is not a one-time obligation; "[e]ach day of an attorney's [professional] life demands that these requirements be met anew"... Furthermore, Swier must submit an affidavit to this Court stating under oath that: 1. He has reviewed the Oath of Attorney and the Rules of Professional Conduct; 2. He fully recognizes that his conduct violated the Rules of Professional Conduct by which he is bound; 3. He pledges to devote every effort in his future practice to fully abide by the Rules of Professional Conduct and Oath of Attorney..."</li> </ul> </li> </ul>
<b>Tennessee</b>	Reference	<a href="#">TN. SUP. CT. R. 6</a>	<ul style="list-style-type: none"> <li>- <a href="#">Joiner v. Joiner, 2005 WL 2805566 (Tenn. Ct. App. 2005)</a> <ul style="list-style-type: none"> <li>o "Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office, the Rules of Professional Conduct of the State of Tennessee, or T.C.A. § 29-308, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship." (this decision is not reported and no other reference to the Oath was found).</li> </ul> </li> </ul>
<b>Texas</b>	No Reference	<a href="#">TEX. GOV'T CODE ANN. § 82.037</a>	<ul style="list-style-type: none"> <li>- No reference to state lawyer's oath violations.</li> </ul>
<b>Utah</b>	Enforceable	<a href="#">UT. CT. R. PREAMBLE</a>	<ul style="list-style-type: none"> <li>- <a href="#">In re Platz, 42 Utah 439, 132 P. 390, 391 (1913)</a> <ul style="list-style-type: none"> <li>o "From the facts found by the referee it is concluded that the said Arthur A. Platz has violated his oath and his duties as an attorney and is morally unfit to be a member of the bar of this court and should be permanently disbarred therefrom."</li> </ul> </li> </ul>

Vermont	Reference	<a href="#">VT. STAT. ANN. TIT. 12, § 5812</a>	<ul style="list-style-type: none"> <li>- <a href="#">In re Jones, 70 Vt. 71, 39 A. 1087, 1091 (1898)</a> <ul style="list-style-type: none"> <li>o “Fidelity to his client's interests, and honesty and frankness in dealing with the judge in regard to discharging a duty towards him and the state, required by law, are prime qualifications of every attorney, made so by his oath of office. It is not contended that if these charges are to stand proven, and are such that the respondent is answerable for them, as an attorney, to this court, they do not demand suspension or disbarment. It matters not that his deception of the judge occurred when he was not acting as a member of the county court, nor in the trial of a cause. It occurred when he was discharging a duty imposed by law... Judgment that said Joseph C. Jones is removed from the office of attorney at law and from the office of solicitor in chancery.”</li> </ul> </li> </ul>
Virginia	No Reference	<a href="#">VA. CODE ANN. § 54.1-3903</a>	<ul style="list-style-type: none"> <li>- No reference to state lawyer's oath violations.</li> </ul>
Washington	Enforceable by Statute	<a href="#">WASH. REV. CODE ANN. § 2.48.210</a>	<ul style="list-style-type: none"> <li>- WASH. REV. CODE ANN. § 2.48.220</li> <li>- <a href="#">In re Disciplinary Proceedings Against Huddleston, 137 Wash.2d 560 (Wash., 1999)</a>. <ul style="list-style-type: none"> <li>o “The oath requires attorneys to abide by the laws of Washington as well as the laws of the United States. Additionally, by taking the oath, attorneys pledge to abide by the Rules of Professional Conduct. <b>Violating the attorney's oath subjects an attorney to discipline</b> ...In this case, the hearing examiner concluded that Huddleston violated the Rules of Professional Conduct as well as several criminal statutes. By committing the crimes of theft and wire or mail fraud, Huddleston certainly violated his attorney's oath.” (citations removed).</li> </ul> </li> <li>- <a href="#">In re Ballou, 48 Wash. 2d 539, 295 P.2d 316 (1956)</a> <ul style="list-style-type: none"> <li>o “The discipline and punishment to be meted out to an attorney who violates his oath of office or canons of ethics is exclusively reserved to the supreme court; the degree of punishment is left to the discretion of this court.”</li> </ul> </li> </ul>
West Virginia	Reference	<a href="#">WV. ADMIS. R. 7.0</a>	<ul style="list-style-type: none"> <li>- <a href="#">Comm. on Legal Ethics of W. Virginia State Bar v. Taylor, 190 W. Va. 133, 137, 437 S.E.2d 443, 447 (1993)</a>. <ul style="list-style-type: none"> <li>o “The respondent's actions, or the lack thereof in this case, adversely reflect upon the respondent's ability to carry out and uphold the laws and ethics of this State. This type of deceitful misconduct by a lawyer will not be tolerated by this Court, as it is in direct contravention of the oath the respondent took when he became a member of the West Virginia Bar.”</li> </ul> </li> </ul>
Wisconsin	Enforceable by Statute	<a href="#">WI. SUP. CT. R. § 40.15</a>	<ul style="list-style-type: none"> <li>- WIS. SUP. CT. R. CH. 20:8.4</li> <li>- <a href="#">In re Richter, 187 Wis. 490, 204 N.W. 492, 497 (1925)</a> <ul style="list-style-type: none"> <li>o “...the court finds that the respondent has been guilty of misconduct which justifies a revocation of his license...in that he did in said case advance facts prejudicial to the honor and reputation ... the plaintiff therein... The advancement of such facts was not required by the justice of the cause, and the same was done by the respondent in violation of his oath as an attorney of this court...It is the order and decree of this court that the license of the respondent ...be and the same hereby is revoked, canceled, and annulled...”</li> </ul> </li> </ul>

<b>Wyoming</b>	Reference	<a href="#">WY. ADMIS. R. 504</a>	<ul style="list-style-type: none"> <li>- <a href="#">State Board of Law Examiners of Wyoming v. Brown, 77 P.2d 626, 631-32 (Wyo. 1938).</a> <ul style="list-style-type: none"> <li>o “The respondent's oath of office as an attorney and counselor at law is not only binding here in Colorado but everywhere. He cannot put it aside or renounce it at pleasure. It abides with him at all times and places, and he will be held responsible to this court for his misconduct as an attorney so long as his name continues on the roll; nor can he put himself in a position which will place him beyond the inherent power of this court to purify the bar of its unworthy members, and to keep its roster clean.”</li> </ul> </li> </ul>
<b>Washington, D.C.</b>	Enforceable by Statute	<a href="#">D.C. CT. APP. R. 46</a>	- DC. BAR R. XI