

## PREAMBLE

The Society recognizes there are many avenues and aspects of trial consulting. The Code provides enforceable standards and offers guidance in many areas common to trial consultants working in this diverse field. The Code applies only to work-related activities. This Preamble offers a framework for better understanding each of the Code's components. The Code provides for: Ethical Principles, Professional Standards, Practice Guidelines, and Commentary.

### ***Ethical Principles***

The Ethical Principles are a statement of shared values that are intended to inform the professional judgment of the working trial consultant striving for the highest professional ideals. Our Society is comprised of professionals with very diverse backgrounds from research science to the law, from applied work in psychology to marketing, advertising and public opinion research. We have members specializing in professional communication applications from drama, training and education to mass communications, behavioral science, linguistics and more. These professional disciplines have bodies of knowledge and ethical principles of their own, which were considered during the creation of our own Code. Our Ethical Principles are not intended to supplant the principles of any other profession, nor should they be seen as an attempt to adopt or incorporate them, in whole or in part.

### ***Professional Standards***

The Professional Standards set forth rules enforceable by the Society for professional conduct as a trial consultant. The Professional Standards are not exhaustive. Rather the Code through its Ethical Principles, Professional Standards and Practice Guidelines reflects a common set of evolving values upon which trial consultants strive to build their professional consulting work. In areas where recognized Professional Standards do not yet exist, trial consultants should exercise careful judgment and take appropriate precautions in their work.

### ***Practice Guidelines***

The ***Practice Guidelines*** consist of suggested business practices based on, but not limited to, the practical experiences of members, current research, the emergence of new techniques or practices, applicable case or statutory law and other sources of relevant information. The ASTC recognizes trial consultants draw on diverse professional backgrounds, often work in unique situations, and function in a variable context influenced by many factors. The Practice Guidelines are informative only and are not meant to be comprehensive, exclusive or to supplant the professional judgment of a consultant.

Although Ethical Principles and Practice Guidelines are not enforceable rules, they should be considered by trial consultants in choosing courses of action. Moreover, they may be considered by the Board of Directors or other designated Committee in interpreting the Professional Standards specifically and the Code generally.

***Commentary***

Additional commentary is included to provide such added information that helps the reader clarify the meaning or context of particular Ethical Principles, Professional Standards or Practice Guidelines.

## **ETHICAL PRINCIPLES**

### **I. Competence**

Trial consultants strive to maintain high standards of competence in their work. They recognize the boundaries of their particular competencies and the limitations of their expertise. When in the role of trial consultant, the member does not practice law but seeks to enhance the practice of law by facilitating the skills of the legal practitioner. Trial consultants are dedicated to providing the legal community with information on litigation related behavior and communication. They provide only those services and use only those techniques for which they are qualified by education, training, or experience. They maintain knowledge of relevant professional information related to the services they render.

### **II. Integrity**

Trial consultants conduct themselves at all times with professional integrity, personal dignity and respect for the legal system.

### **III. Professional Responsibility**

Trial consultants uphold professional standards of conduct and clarify their professional roles and obligations.

### **IV. Social Responsibility**

Trial consultants comply with the law and encourage the development of law and social policy that serve the interests of their clients and the public generally.

Trial consultants strengthen and improve the legal system by offering pro bono services to indigent litigants, to law schools, and law firm training programs, to court systems and legislative bodies, and to training programs within our own profession.

### **V. Professional Behavior**

Members will treat other members with respect and integrity. Communications with each other and about each other will be conducted in a civil and professional manner.

## GENERAL PROFESSIONAL STANDARDS

### I. **Consultant-Client Relationship**

The trial consultant is generally retained directly by the attorney, but may be employed by the litigant or insurer representing the litigant.

#### A. *Attorney as Client:*

The trial consultant who is retained by the attorney: (1) works under the direction and supervision of the attorney; (2) cooperates with the attorney to assure all consultant-attorney communication is subject, to the extent provided under the law, to attorney/client privilege and work-product doctrine.

#### B. *Litigant as Client:*

The trial consultant who is retained by the litigant informs the litigant, prior to retention that the consultant's work will be treated as professionally confidential, but probably is not subject to legal protection from disclosure under any attorney/client privilege, work-product, or other doctrine.

#### C. *Insurer as Client:*

The trial consultant who is retained by the insurer: (1) informs the attorney that the trial consultant works under the authority of the insurer; (2) cooperates with the attorney to assure all consultant-attorney communication is subject, to the extent possible under the law, to attorney/client privilege and work-product doctrine.

### II. **Member-to-Member Relationships**

#### A. *Contracts:*

Members who collaborate with each other shall abide by the terms of their oral and written agreements(s), if any.

#### B. *Intellectual Property Ownership*

Members shall respect and not infringe or misappropriate any other member's intellectual property, trade secrets, or proprietary or confidential information.

#### C. *Non-Solicitation*

Subcontractor-Members introduced to a Contractor-Member's individual client through a collaborative engagement shall not solicit the Contractor-Member's individual client unless allowed under an agreement and shall

engage in good-faith efforts to respect each other's client relationships.<sup>1</sup> "Individual client" is limited to an individual person with whom the Contractor has an established client relationship. It is not intended to be overly broad, e.g., to a whole firm, organization, or industry.

### **III. Training and Provision of Services**

The trial consultant fully discloses academic qualifications and consulting experience to potential clients, specifies the services provided, and identifies the objectives of each consultation.

### **IV. Advertising and Publicity**

Trial consultants may advertise services. Such advertising avoids material misrepresentation of qualifications, experience, and research or trial outcomes. Client permission is obtained prior to the placement of any advertisement that identifies a client or case. The trial consultant does not publish a claim to a win-loss record.

### **V. Conflicts of Interest**

Trial consultants do not provide services for a client if those services appear to be in conflict with the interest of another client, unless the trial consultant informs each client of the nature of the conflict and both clients give their consent. The trial consultant remains alert throughout the consultant-client relationship for potential conflicts with present and past clients, and with present and past clients of trial consultants employed within the same business or practice group.

### **VI. Integrity of the Jury Pool**

Trial consultants provide all services in a manner that will protect the integrity of the jury pool.

# GENERAL PROFESSIONAL GUIDELINES

## I. Member-to-Member Relationships

### A. *Non-Solicitation*

It is best practice for Members to include Non-Solicitation clauses within their engagement contracts and specify the terms within.<sup>2</sup>

### B. *Personal / Professional Disputes*

Neither the ASTCNET listserv, nor any of the ASTC website forums are platforms for airing personal disputes or resolving contractual or other conflicts with fellow members. These forums are intended for the exchange of relevant practice-related information among members.

# GENERAL PROFESSIONAL STANDARDS AND GUIDELINES: COMMENTARY

## ***Standards***

<sup>1</sup> Exceptions may include:

1. When a client relationship already exists between the Subcontractor-Member and the Contractor-Member's individual client.
2. As provided by law (e.g., limitations on non-compete agreements).
3. The Contractor-Member's individual client relationship ceases to exist, with little or no prospect of continuing in the future.
4. An individual client relationship is developed by the Subcontractor-Member independently and subsequent to the engagement with the Contractor-Member in the normal course and scope of business or marketing.

"Normal course and scope of business" may include, for example, a subsequent engagement secured by the Subcontractor through another person or firm where a Contractor's client is involved.

"Normal course and scope of marketing" may include, for example, a presentation to a firm or organization, a publication, a referral, attendance at a conference or other meeting, etc. that prompts the Contractor's client to initiate contact with the Subcontractor.

## ***Guidelines***

<sup>2</sup> It is also best practice for non-solicitation clauses to anticipate exceptions like those noted above.