



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

The Role of Unwritten Norms in the Operation of Our Courts

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Courts are products of legal doctrine. A judge's primary responsibility is to interpret and fairly apply the written law to the facts of each case. To this end, everyone knows judges are governed by a host of written statutes, as well as by precedent from previous cases decided by higher courts. Most people also know there are written rules of procedure and ethics judges must follow. But in the real world where there are nuanced and complex issues, the explicit statutes and cases may not provide all the answers. Written rules similarly cannot address every aspect of a judge's behavior.

Thus, in addition to written laws and rules, there is another, implicit, body of principles that comes into play.

Unwritten Norms, Customs, and Expectations.

This implicit body of principles is largely unwritten. It consists of norms, customs, standards, and shared expectations for judges. Together, these norms serve as institutional guardrails for the judiciary. Judges comply with them voluntarily. Some compliance results from agreement with these principles, while some results from social pressure from fellow judges. These unwritten principles shape the way judges manage and adjudicate their cases, conduct themselves both on and off the bench, relate to others in the judiciary, and even how they interact with the public and other branches of government.

Norms Inform How Judges Manage Their Caseloads.

A prime example of norms informing a judge's behavior is how a judge manages his or her caseload. How the judge handles pretrial matters, schedules the trial, and interacts with the lawyers is a matter of personal preference for the judge and not a matter of law.

This is one place where judicial norms and expectations come in. Even though judges have substantial discretion on how to manage their caseloads, it is the norm and the expectation that judges will manage their caseloads efficiently and with dispatch, so that cases progress reasonably expeditiously. Litigants have a right to expect that their cases will not unnecessarily linger in a judicial labyrinth. The norms and expectations also call for judges to handle their cases with fairness, impartiality, and civility.

Norms Inform How Judges Conduct Themselves On the Bench.

Norms also come into play with how judges conduct themselves when presiding over a trial or hearing. This is the most common picture the public has of judges—in their robes on the bench—making compliance with norms in this situation especially important. Norms dictate that a judge is well prepared for the matter under consideration and knowledgeable about the relevant law. Ethics rules and norms also require the judge to handle himself or herself with discipline, restraint, and dignity. Equally important ethics rules and norms compel judges to treat the lawyers, the parties, the witnesses, and any spectators in the courtroom with respect and civility. These are all norms with a long and honored history.

Norms Inform How Judges Conduct Themselves Off the Bench.

Norms apply outside of the courtroom as well. Norms, along with judicial ethics and codes of conduct, require that judges conduct themselves in such a way as not to bring disrepute upon the judiciary. Even actions that may be perfectly legal can shed a bad light on the judiciary.

In most occupations, habitually coming to work late or not performing a job satisfactorily might get a person fired, but it would not reflect poorly on the person's occupation as a whole. It is different for judges. When one judge falls below the standard, it is common for the public to lose some respect for judges as a group. Therefore the norms and expectations are that judges will diligently perform their duties and give their very best.

The same principles apply outside the courthouse altogether. While a member of the public may be excused for getting into a loud or profane dispute in a restaurant or at a sporting event, that would be quite damaging for a judge's reputation. More importantly, it would damage the reputation of the judiciary itself. Judicial norms and ethics codes rightly demand that judges be cautious about their actions in public, control their tempers, and always exhibit integrity in all they do.

Norms Serve an Important Function in the American Legal System.

Our courts are the protectors of the rule of law. But judges are not automatons mechanically applying the relevant legal rules, statutes, and precedents. They are living individuals who must rely on and be guided by not only written laws but also many unwritten norms. By preserving the public's confidence in the courts, these principles help maintain the legitimacy, reputation, and credibility of the judicial system. As such, they play an important role in our society. We are very fortunate that the great majority of judges in the United States, in both state and federal courts, live up to these norms.

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