

California Attorney Guidelines of Civility and Professionalism

Proposed Long Version
(April 18, 2007)

INTRODUCTION

As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.

These are guidelines for civility. The Guidelines are offered because civility in the practice of law promotes both the effectiveness and the enjoyment of the practice and economical client representation. The legal profession must strive for the highest standards of attorney behavior to elevate and enhance our service to justice. Uncivil or unprofessional conduct not only disserves the individual involved, it demeans the profession as a whole and our system of justice.

These voluntary Guidelines foster a level of civility and professionalism that exceed the minimal requirements of the mandated Rules of Professional Conduct as the standard of civility in the practice of law in California. The Guidelines are not intended to supplant these or any other rules or laws that govern attorney conduct. Since the Guidelines are not mandatory rules of professional conduct, nor rules of practice, nor standards of care, they are not to be used as an independent basis for disciplinary charges by the State Bar or claims of professional negligence.

The Guidelines are intended to complement codes of professionalism adopted by bar associations in California. Individual attorneys are encouraged to make these guidelines their personal standards by taking the pledge that appears at the end. The Guidelines can be applicable to all lawyers regardless of practice area. Attorneys are encouraged to comply with the spirit of these guidelines, and not simply blindly adhere to their strict letter.

SECTION 1

RESPONSIBILITIES TO THE JUSTICE SYSTEM

The dignity, decorum and courtesy that have traditionally characterized the courts and legal profession of civilized nations are not empty formalities. They are essential to an atmosphere that promotes justice and to an attorney's responsibility for the fair and impartial administration of justice.

SECTION 2

RESPONSIBILITIES TO THE PUBLIC AND THE PROFESSION

An attorney should be mindful that, as individual circumstances permit, the goals of the profession include improving the administration of justice and contributing time to persons and organizations that cannot afford legal assistance.

An attorney should encourage new members of the bar to adopt these guidelines of civility and professionalism and mentor them in applying the guidelines.

SECTION 3

RESPONSIBILITIES TO THE CLIENT AND CLIENT REPRESENTATION

An attorney should treat clients with courtesy and respect, and represent them in a civil and professional manner. An attorney should advise current and potential clients that it is not acceptable for an attorney to engage in abusive behavior or other conduct unbecoming a member of the bar and an officer of the court.

As an officer of the court, an attorney should not allow clients to prevail upon the attorney to engage in uncivil behavior.

An attorney should not compromise the guidelines of civility and professionalism to achieve an advantage.

SECTION 4

COMMUNICATIONS

An attorney's communications about the legal system should at all times reflect civility, professional integrity, personal dignity, and respect for the legal system. An attorney should not engage in conduct that is unbecoming a member of the Bar and an officer of the court.

For example, in communications about the legal system and with adversaries:

- a. An attorney's conduct should be consistent with high respect and esteem for the civil and criminal justice systems.
- b. This standard does not prohibit an attorney's good faith, factually based expressions of dissent or criticism made in public or private discussions for the purpose of improving the legal system or profession, or addressing perceived inadequacies.

- c. An attorney should not disparage the intelligence, integrity, ethics, morals or behavior of the court or other counsel, parties or participants when those characteristics are not at issue.
- d. An attorney should not disparage another's race, color, religion, gender, national origin, ancestry, age, disability or sexual orientation.
- e. An attorney should not make exaggerated, false, or misleading statements to the media while representing a party in a pending matter.
- f. An attorney should avoid hostile, demeaning or humiliating words.
- g. An attorney should not create a false or misleading record of events that have not occurred or attribute to an opposing counsel a position not taken.
- h. An attorney should agree to reasonable requests in the interests of efficiency and economy, including agreeing to a waiver of procedural formalities where appropriate.
- i. Unless specifically permitted or invited by the court or authorized by law, an attorney should not send:
 - 1. A copy of a letter addressed to opposing counsel to the court, or
 - 2. A letter to the court, with a copy to opposing counsel.

Nothing above shall be construed as discouraging the reporting of conduct that fails to comply with the Rules of Professional Conduct.

SECTION 5 PUNCTUALITY

An attorney should be punctual in appearing at trials, hearings, meetings, depositions and other scheduled appearances.

For example:

- a. An attorney should arrive sufficiently in advance to resolve preliminary matters.
- b. An attorney should timely notify participants when the attorney will be late or is aware that a participant will be late.

SECTION 6 SCHEDULING, CONTINUANCES AND EXTENSIONS OF TIME

An attorney should advise clients that civility and courtesy in scheduling meetings, hearings and discovery are expected as professional conduct.

For example:

- a. An attorney should consider the scheduling interest of the court, other counsel or party, and other participants, should schedule by agreement whenever possible, and should send formal notice after agreement is reached.
- b. An attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations or engage in delay tactics.
- c. An attorney should promptly notify the court and other counsel of problems with key participants' availability.
- d. An attorney should promptly notify other counsel and, if appropriate, the court, when scheduled meetings, hearings or depositions must be cancelled or rescheduled, and provide alternate dates when possible.

In considering requests for an extension of time, an attorney should consider the client's interests and need to promptly resolve matters, the schedules and willingness of others to grant reciprocal extensions, the time needed for a task, and other relevant factors.

Consistent with existing law and court orders, an attorney should agree to reasonable requests for extensions of time that are not adverse to a client's interests.

For example:

- a. Unless time is of the essence, an attorney should agree to an extension without requiring motions or other formalities, regardless of whether the requesting counsel previously refused to grant an extension.
- b. An attorney should agree to an appropriate continuance when new counsel substitutes in.
- c. An attorney should advise clients that failing to agree with reasonable requests for time extensions is inappropriate.
- d. An attorney should not use extensions or continuances for harassment or to extend litigation.
- e. An attorney should place conditions on an agreement to an extension only if they are fair and essential or if the attorney is entitled to impose them, for instance to preserve rights or seek reciprocal scheduling concessions.
- f. If an attorney intends that a request for or agreement to an extension shall cut off a party's substantive rights or procedural options, the attorney should disclose that intent at the time of the request or agreement.

SECTION 7 SERVICE OF PAPERS

The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.

For example:

- a. An attorney should serve papers on the attorney who is responsible for the matter at his or her principal place of work.
- b. If possible, papers should be served upon counsel at a time agreed upon in advance.
- c. When serving papers, an attorney should allow sufficient time for opposing counsel to prepare for a court appearance or to respond to the papers.
- d. An attorney should not serve papers to take advantage of an opponent's absence or to inconvenience the opponent, for instance by serving papers late on Friday afternoon or the day preceding a holiday.
- e. When it is likely that service by mail will prejudice an opposing party, an attorney should serve the papers by other permissible means.

SECTION 8 WRITINGS SUBMITTED TO THE COURT, COUNSEL OR OTHER PARTIES

Written materials directed to counsel, third parties or a court should be factual and concise and focused on the issue to be decided.

For example:

- a. An attorney should not make ad hominem attacks on opposing counsel.
- b. Unless at issue or relevant in a particular proceeding, an attorney should avoid degrading the intelligence, ethics, morals, integrity, or personal behavior of others.
- c. An attorney should clearly identify all revisions in a document previously submitted to the court or other counsel.

SECTION 9 DISCOVERY

Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange of documents.

Attorneys are encouraged to propound and respond to formal discovery in a manner designed to fully implement the purposes of the Civil Discovery Act.

An attorney should not use discovery to harass an opposing counsel or delay the resolution of a dispute.

For example:

a. As to Depositions:

1. When another party notices a deposition for the near future, absent unusual circumstances, an attorney should not schedule another deposition in the same case for an earlier date without opposing counsel's agreement.
2. An attorney should delay a scheduled deposition only when necessary to address scheduling problems and not in bad faith.
3. An attorney should treat other counsel and participants with courtesy and civility, and should not engage in conduct that would be inappropriate in the presence of a judicial officer.
4. An attorney should remember that vigorous advocacy can be consistent with professional courtesy, and that arguments or conflicts with other counsel should not be personal.
5. An attorney should not engage in conduct unbecoming an officer of the court or disparage the intelligence, integrity, ethics, morals, behavior or characteristics (such as gender, race, age, sexual orientation, or disability) of other participants when those matters are not at issue.
6. An attorney questioning a deponent should provide other counsel present with a copy of any documents shown to the deponent before or contemporaneously with showing the document to the deponent.
7. Once a question is asked, an attorney should not interrupt a deposition or make an objection for the purpose of coaching a deponent or suggesting answers.
8. An attorney should not direct a deponent to refuse to answer a question or end the deposition without a legal basis for doing so.
9. An attorney should refrain from self-serving speeches and speaking objections.

b. As to Document Demands:

1. Document requests should be used only to seek those documents that are reasonably needed to prosecute or defend an action.

2. An attorney should not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.
 3. If an attorney inadvertently receives a privileged document, the attorney should promptly notify the producing party that the document has been received.
 4. In responding to a document demand, an attorney should not intentionally misconstrue a request in such a way as to avoid disclosure or withhold a document on the grounds of privilege.
 5. An attorney should not produce disorganized or unintelligible documents, or produce documents in a way that hides or obscures the existence of particular documents.
 6. An attorney should not delay in producing a document in order to prevent opposing counsel from inspecting the document prior to or during a scheduled deposition or for some other tactical reason.
- c. As to Interrogatories:
1. An attorney should narrowly tailor special interrogatories and not use them to harass or impose an undue burden or expense on an opposing party.
 2. An attorney should not intentionally misconstrue or respond to interrogatories in a manner that is not truly responsive.
 3. When an attorney lacks a good faith belief in the merit of an objection, the attorney should not object to an interrogatory. If an interrogatory is objectionable in part, an attorney should answer the unobjectionable part.

SECTION 10

MOTION PRACTICE

An attorney should consider whether, before filing or pursuing a motion, to contact opposing counsel to attempt to informally resolve or limit the dispute.

For example:

- a. Before filing demurrers, motions to strike, motions to transfer venue, and motions for judgment on the pleadings, an attorney should engage in more than a pro forma effort to resolve the issue.
- b. In complying with any meet and confer requirement in the California Code of Civil Procedure, an attorney should speak personally with opposing counsel and engage in a good faith effort to resolve or informally limit an issue.

- c. An attorney should not engage in conduct that forces an opposing counsel to file a motion and then not oppose the motion.
- d. An attorney who has no reasonable objection to a proposed motion should promptly make this position known to opposing counsel, who then may file an unopposed motion or avoid filing a motion.
- e. After opposing a motion, if an attorney recognizes that the movant's position is correct, the attorney should promptly advise the movant and the court of this change in position.
- f. Because requests for monetary sanctions, even if statutorily authorized, can lead to the destruction of a productive relationship between counsel or parties, monetary sanctions should not be sought unless fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to resolve the issue informally among counsel.

SECTION 11

DEALING WITH NONPARTY WITNESSES

It is important to promote high regard for the profession and the legal system among those who are neither attorneys nor litigants. An attorney's conduct in dealings with nonparty witnesses should exhibit the highest standards of civility.

For example:

- a. An attorney should be courteous and respectful in communications with nonparty witnesses.
- b. Upon request, an attorney should extend professional courtesies and grant reasonable accommodations, unless to do so would materially prejudice the client's lawful objectives.
- c. An attorney should take special care to protect a witness from undue harassment or embarrassment and to state questions in a form that is appropriate to the witness's age and development.
- d. An attorney should not issue a subpoena to a nonparty witness for inappropriate tactical or strategic purposes, such as to intimidate or harass the nonparty.
- e. As soon as an attorney knows that a previously scheduled deposition will or will not, in fact, go forward as scheduled, the attorney should notify all counsel.
- f. An attorney who obtains a document pursuant to a deposition subpoena should, upon request, make copies of the document available to all other counsel at their expense.

SECTION 12

EX PARTE COMMUNICATION WITH THE COURT

An attorney should not communicate ex parte with a court on the substance of a case pending before the court, except where permitted by law and where the lawyer's client will be seriously prejudiced if the application or communication is made with regular notice.

SECTION 13

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

An attorney should raise and explore with the client and, if the client consents, with opposing counsel, the possibility of settlement and alternative dispute resolution in every case as soon possible and, when appropriate, during the course of litigation.

For example:

- a. An attorney should advise a client at the outset of the relationship of the availability of alternative dispute resolution.
- b. An attorney should attempt to evaluate a matter objectively and to de-escalate any controversy or dispute in an effort to resolve or limit the controversy or dispute.
- c. An attorney should consider whether alternative dispute resolution would adequately serve a client's interest and dispose of the controversy expeditiously and economically.
- d. An attorney should honor a client's desire to settle the dispute quickly and in a cost-effective manner.
- e. An attorney should use an alternative dispute resolution process for purposes of settlement and not for delay or other improper purposes, such as discovery.
- f. An attorney should participate in good faith, and assist the alternative dispute officer by providing pertinent and accurate facts, law, theories, opinions and arguments in an attempt to resolve a dispute.
- g. An attorney should not falsely hold out the possibility of settlement as a means for terminating discovery or delaying trial.

SECTION 14

CONDUCT IN COURT

To promote a positive image of the profession, an attorney should always act respectfully and with dignity in court and assist the court in proper handling of a case.

For example:

- a. An attorney should be punctual and prepared.
- b. An attorney's conduct should avoid disorder or disruption and preserve the right to a fair trial.
- c. An attorney should maintain respect for and confidence in a judicial office by displaying courtesy, dignity and respect toward the court and courtroom personnel.
- d. An attorney should refrain from conduct that inappropriately demeans another person.
- e. Before appearing in court, an attorney should advise a client of the kind of behavior expected of the client and endeavor to prevent the client from creating disorder or disruption in the courtroom.
- f. An attorney should make objections for legitimate and good faith reasons, and not for the purpose of harassment or delay.
- g. An attorney should honor an opposing counsel's requests that do not materially prejudice the rights of the attorney's client or sacrifice tactical advantage.
- h. While appearing before the court, an attorney should address all arguments, objections and requests to the court, rather than directly to opposing counsel.
- i. While appearing in court, an attorney should demonstrate sensitivity to any party, witness or attorney who has requested, or may need, accommodation as a person with physical or mental impairment, so as to foster full and fair access of all persons to the courts.

SECTION 15 DEFAULT

An attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning.

For example:

- a. An attorney should not race opposing counsel to the courthouse to knowingly enter a default before a responsive pleading can be filed. This guideline is intended to apply only to taking a default when there is a failure to timely respond to complaints, cross-complaints, and amended pleadings.

SECTION 16 SOCIAL RELATIONSHIPS WITH JUDICIAL OFFICERS, NEUTRALS AND COURT APPOINTED EXPERTS

An attorney should avoid even the appearance of bias by notifying opposing counsel or an unrepresented opposing party of any close, personal relationship between the attorney and a judicial

officer, arbitrator, mediator or court-appointed expert and allowing a reasonable opportunity to object.

SECTION 17 PRIVACY

An attorney should respect the privacy rights of parties and non-parties.

For example:

- a. An attorney should not inquire into, attempt or threaten to use, private facts concerning any party or other individuals for the purpose of gaining an advantage in a case. This guideline does not preclude inquiry into sensitive matters relevant to an issue, as long as the inquiry is pursued as narrowly as possible.
- b. If an attorney must inquire into an individual's private affairs, the attorney should cooperate in arranging for protective measures, including stipulating to an appropriate protective order, designed to assure that the information revealed is disclosed only for purposes relevant to the pending litigation.
- c. Nothing herein should be construed as authorizing the withholding of information in violation of applicable law.

SECTION 18 NEGOTIATION OF BUSINESS TRANSACTIONS

In addition to other applicable Sections of these Guidelines, attorneys engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision. Attorneys engaged in a transactional practice should be mindful that their primary goals are to negotiate in a manner that accurately represents their client and the purpose for which they were retained, and to successfully and timely conclude a transaction in a manner that accurately represents the parties' intentions and has the least likely potential for litigation.

For example:

- a. An attorney should negotiate and conclude a transaction in a cooperative manner and with informed agreement. With client approval, attorneys should consider giving each party permission to contact the employees of the other party for the purpose of promptly and efficiently obtaining necessary information and documents.
- b. In preparing documents, an attorney should identify standards that will apply to a transaction, including terminology that designates parties and other persons; terms that define business practices; acceptable forms of communication; and the manner of noting changes in draft documents.

- c. An attorney should use boilerplate provisions only if they apply to a transaction. If an attorney modifies boilerplate language, the attorney should clearly identify the change and bring it to the attention of other counsel.
- d. An attorney should avoid negotiating tactics that are abusive; that are not made in good faith; that threaten legal action; that are not true; that set arbitrary deadlines; that are intended solely to gain an unfair advantage or take unfair advantage of a superior bargaining position; or that do not accurately reflect the client's wishes or previous oral agreements.
- e. An attorney should not participate in an action or the preparation of a document that is intended to circumvent or violate applicable laws or rules.

SECTION 19

ADDITIONAL PROVISION FOR FAMILY LAW PRACTITIONERS

In addition to other applicable Sections of these Guidelines, family law practitioners have special duties. In dissolution of marriage and child custody proceedings, an attorney should take a problem-solving approach and keep the best interest of the child in mind. The attorney should seek to reduce emotional tension and trauma and encourage the parties and attorneys to interact in a cooperative atmosphere.

For example:

- a. An attorney should discourage and should not abet vindictive conduct and should treat all participants with courtesy and respect in order to minimize the emotional intensity of a family dispute.
- b. An attorney should attempt to resolve disputes by agreement and should consider alternatives to litigation to resolve disputes.
- c. An attorney representing a parent should consider the welfare of a minor child and seek to minimize the adverse impact of the marriage dissolution on the child.

SECTION 20

ADDITIONAL PROVISION FOR CRIMINAL LAW PRACTITIONERS

In addition to other applicable Sections of these Guidelines, criminal law practitioners have special duties. Prosecutors are charged with seeking justice, while defenders must zealously represent their clients even in the face of seemingly overwhelming evidence of guilt. In practicing criminal law, a criminal law attorney should appreciate these duties.

For example:

- a. An attorney should not escalate professional disputes to a personal level by criticizing an opposing counsel.

- b. A prosecutor or defense counsel should not make disparaging personal comments about opposing counsel.
- c. A prosecutor should not question the propriety of defending a person accused of a crime.
- d. Appellate counsel and trial counsel should communicate openly, civilly and without rancor, endeavoring to keep the proceedings on a professional level.

SECTION 21 COURT PROCEEDINGS

Judges are encouraged to become familiar with these Guidelines and to support and promote them where appropriate in court proceedings.

ATTORNEY'S PLEDGE

I commit to these Guidelines of Civility and Professionalism and will be guided by a sense of integrity, cooperation and fair play.

I will abstain from rude, disruptive, disrespectful, and abusive behavior, and will act with dignity, decency, courtesy, and candor with opposing counsel, the courts and the public.

As part of my responsibility for the fair administration of justice, I will inform my clients of this commitment and, in an effort to help promote the responsible practice of law, I will encourage other attorneys to observe these Guidelines.

(Name)

(Date)