

## GUIDELINES OF PROFESSIONAL COURTESY

### PREAMBLE

Lawyers are expected to play many demanding roles, including that of advocate promoting a client's interests, frequently in opposition to the interests of others. A strong commitment to high professional standards is required. In fulfilling their duty to represent clients zealously, lawyers should be mindful of their obligation to the administration of justice, which is designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

The Rules of Professional Conduct define the minimum requirements for lawyers with complex and often competing obligations to their clients, to their adversaries, and to the system of justice. The Rules presuppose an adversary system that is not an end in itself, but rather a means to justice, and that is tempered accordingly. In their preamble, the Rules call on lawyers to hold themselves to a higher standard than the minimum required to avoid disciplinary action.

These guidelines of professional courtesy are not rules and are not intended to be treated like rules. While some of them address conduct required by the Rules of Professional Conduct, others call for more than what the Rules require. Some are rather specific; others use general language that would be inappropriate in an enforceable rule, but appropriate as a statement of principle intended to guide individual judgment and behavior. The adoption and revision of these guidelines represent an ongoing attempt to define and promote the highest standards of professional conduct.

#### **1. A lawyer should treat others with courtesy and respect.**

A lawyer should treat other people, including judges and court personnel, other lawyers and their staffs, opposing parties, and witnesses, with courtesy and respect. This principle applies to all encounters and communications, not just those that occur in formal settings such as a court hearing. The adversarial nature of many professional encounters does not justify an exception to this principle.

#### **2. A lawyer should honor promises or commitments.**

A lawyer should endeavor in good faith to honor all express promises and agreements with others, whether oral or written. A lawyer's word is a commitment on which others may rightfully rely. If unforeseen circumstances prevent a lawyer from honoring a promise or commitment, the lawyer should immediately notify all persons who might otherwise rely on it.

#### **3. A lawyer should never knowingly deceive another.**

Honesty among lawyers is essential to our legal system. It is recognized that an adversarial relationship requires all sides to advocate their interests vigorously. This guideline does not suggest that there is an obligation (apart from those required by ethical canons, laws, or court rules) for a lawyer to disclose anything that may harm a client's interest, or to refrain from forceful expression of opinions helpful to the client's position. It is directed against deliberate and deceptive acts or omissions by lawyers.

#### **4. A lawyer should make reasonable efforts to schedule matters with other counsel by agreement.**

A lawyer should recognize scheduling interests of other counsel. Depositions, hearings, meetings, and other events requiring the presence of other counsel should be scheduled by agreement whenever possible. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or an unfair advantage. This principle does not remove the necessity of serving formal notice as required by statute or rule: misunderstandings can be avoided if formal notice is sent after an agreement is reached. Notice of cancellation of depositions, hearings, and the like should be given at the earliest possible time.

**5. A lawyer should be timely in responding to other lawyers and considerate of their time.**

Much of a lawyer's work, such as negotiations, drafting or revising drafts of documents, and exchange of information is done without specific deadlines. Nevertheless, there is an expectation that a lawyer who is to respond to the other lawyers engaged in the matter will do so with reasonable promptness, so it is not necessary to make repeated requests or leave an accumulation of unanswered messages. If a lawyer is not able to respond in a timely manner or by a promised date, the other lawyers should be informed in advance. Revised drafts of documents should be accurately marked to show changes to facilitate review.

**6. A lawyer should not seek or threaten to seek sanctions against opposing counsel for mere tactical advantage.**

Seeking sanctions against opposing counsel may impugn the integrity of that individual. Such action should be taken only when the lawyer requesting sanctions believes in good faith that they are warranted. Alternatives such as agreement with opposing counsel, protective orders, motions *in limine*, and limits on discovery should be explored before stronger measures are sought. This guideline is not intended to discourage appropriate use of sanctions. When sanctions are sought, the party requesting them should do so in a professional manner, stating the supporting facts upon which the request is based, and avoiding personal attacks against opposing counsel or parties.

**7. A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.**

The legal system works best when it has the respect and confidence of the court, lawyers, and the public. Unfounded accusations of unethical conduct diminish respect for the entire profession. If a lawyer genuinely believes that opposing counsel has engaged in unethical conduct and believes it can be clearly established, the matter should be referred to the appropriate bar committee or the court. If the lawyer does not believe that the matter is clear enough to be referred to the appropriate bar committee or the court, it should not be publicized.

**8. A lawyer should be punctual.**

A lawyer should respect the commitments of others by arriving at depositions, hearings, and meetings on time. A lawyer should attempt to notify all participants when he or she will be unavoidably late. When a lawyer is aware that a witness will be late for a scheduled event, the other participants should be notified.

**9. A lawyer should seek informal agreement on procedural and preliminary matters.**

When a party in a civil matter is entitled to something, such as information or documents in discovery, normally it should be provided without resort to formal procedural mechanisms such as motions, hearings, or orders. Whenever appropriate, facts that are not in dispute should be stipulated in writing to avoid the time, expense, and effort required to establish them by formal proof. If there is no dispute that a document is genuine or authentic, or that foundation otherwise can be established for its admission, a lawyer should normally not require an adversary to obtain the testimony of a custodial or other foundation witness. It is recognized that in criminal defense cases counsel has an obligation to require that the prosecution prove its case, and this guideline is not intended to suggest concessions that are inconsistent with such an obligation. Lawyers should remain sensitive to the need to follow up any informal agreement with appropriate formal procedures in order to preserve the record.

**10. A lawyer should not engage in invidious discrimination.**

A lawyer should avoid words or conduct intended to convey disrespect for another person because of the person's sex, race, age, religion, national origin, disability, sexual orientation, or marital status. Also, a lawyer should not condone such words or acts on the part of others.

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