

Marin County Bar Assn Code of Civility

The following was approved by the Board of Directors of the Marin County Bar Association on December 9, 1997. It has been submitted to the Marin County courts to be adopted and appended to the rules of the Marin County court's Code of Civility guidelines of professional courtesy and civility.

PREAMBLE

The practice of law is largely an adversarial process. Attorneys are ethically bound to zealously represent and advocate their clients' interests. Nonetheless, there exist certain standards of professional courtesy, and certain duties of professionalism that are owed by attorneys to their clients, opposing parties and their counsel, the courts, and the public as a whole. Members of the Marin County Bar Association have practiced law with a level of professionalism that exceeds the requirements of the State Bar Act and the State Bar mandated Rules of Professional Conduct. The following standards of professional courtesy are guidelines for the conduct preferred and expected by a majority of attorneys practicing in Marin County. These standards are not meant to be exhaustive, however, they represent accepted norms of professional behavior upon which the successful functioning of the judicial system depends.

These standards have received the approval of the Board of Directors of the Marin County Bar Association. They have also been endorsed by the Judges of the Marin County Courts. This Code of Civility and the standards contained herein will be considered by the Judges of the Marin County Courts in their rulings pursuant to California Code of Civil Procedure §§ 128, 128.5, 128.7, 177 and 177.5, and Family Code §§ 270 and 271, as provided for in the Marin County Courts' Rules, Rule ____.

All attorneys conducting any practice of law in Marin County are encouraged to comply with the letter and spirit of these standards. The goals stated and inherent herein are equally applicable to all attorneys regardless of area of practice.

This Code is not a substitute for California statutes and Rules of Court, and no provision of this Code is intended to be a method to extend time limitations of such statutes and rules, including "fast track" time limitations, without appropriate court order.

SECTION 1: SCHEDULING:

Civility and courtesy in scheduling meetings, hearings and discovery are expected, are not to be equated with weakness, and are not inconsistent with zealous representation of the client. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Makes reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and considers the scheduling interests of opposing counsel, the parties, witnesses and the court. Misunderstandings are avoided by sending formal notices.
- b. Does not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations.
- c. Does not engage in delay tactics in scheduling meetings, hearings and discovery.
- d. Tries to verify the availability of key participants and witnesses either before a meeting, hearing or trial date is set, or if that is not feasible, immediately after so that he or she can promptly notify the court, or other tribunal, and opposing counsel of any likely problems.
- e. Notifies opposing counsel, and if appropriate, the court or other tribunal, as early as possible when scheduled meetings, hearings or depositions must be canceled or rescheduled.

SECTION 2: CONTINUANCES AND EXTENSIONS OF TIME:

Consistent with existing law and court orders, a lawyer should agree to reasonable requests for extensions of time within which to respond to pleadings, discovery and other matters when such an extension would not prejudice the client or unduly delay a proceeding. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Agrees to reasonable requests for extensions of time or continuances without requiring motions or other formalities. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence, or the client would be disadvantaged. A first extension should be allowed even if the counsel requesting it has previously refused to grant an extension.
- b. Considers any reasonable request for time in light of the need for prompt resolution of matters, the consideration which should be extended to an opponent's professional and personal schedule, the opponent's willingness to grant reciprocal extensions, time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.
- c. Does not seek extensions or continuances for the purposes of harassment or prolonging litigation.
- d. Does not condition extensions on terms which alter the rights of the parties in the litigation. A lawyer may impose conditions that preserve rights that an extension might jeopardize and may seek reciprocal scheduling concessions.

SECTION 3. SERVICE OF PAPERS:

The time and manner of service of papers should not be calculated to disadvantage or embarrass the party receiving the papers. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Does not serve papers simply to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary.
- b. Serves papers by personal delivery or by facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.
- c. Serves papers on an individual attorney known to be responsible for the matter and at his or her principal place of business.
- d. Refrains from using the mode, timing or place of serving papers primarily to embarrass a party or witness.

SECTION 4. PUNCTUALITY:

A lawyer should be punctual in communications with others and in honoring scheduled appearances. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Arrives sufficiently in advance of trials, hearings, meetings, depositions or other scheduled events so that preliminary matters can be resolved.
- b. Timely notifies all other participants and the court when, for a reason beyond his or her control, the lawyer will be unavoidably late.
- c. Timely notifies the other participants and the court when he or she is aware that a participant will be late for a scheduled event.

SECTION 5. COMMUNICATIONS:

Memoranda, declarations and other written materials submitted to the court should always be factual and concise and should accurately state the current law and fairly represent the parties' position without unfairly attacking the opposing party or opposing counsel. A lawyer should, at all times, be civil, courteous and as accurate as possible in communication with adversaries and the court, whether in writing or orally. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Does not use facts not properly introduced in the case in written briefs or memoranda of points and authorities.
- b. Does not orally or in writing degrade or disparage any judicial officer, the opposing party, counsel or witness(es) unless such matters are specifically at issue in the proceeding.
- c. Does not draft letters assigning to an opposing party a position that that party has not taken or to create a record of the events that have not occurred.
- d. Makes sparing use of letters intended only to make a record and only when the lawyer thinks it is necessary given all the circumstances. Does not send a copy of a

letter addressed to opposing counsel to the Judge unless specifically invited by the court to do so.

f. Does not fail or refuse, without justification, to respond to the phone calls and letters of opposing counsel.

SECTION 6. DISCOVERY:

A lawyer should not use any form of discovery, the scheduling of discovery, or any other part of the discovery process as a means of harassing opposing counsel, or the opposing party, or as a means of delaying the timely, efficient and cost effective resolution of the dispute, or to obtain unfair advantage. Specifically, a lawyer who manifests professional courtesy and civility:

a. Ensures that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. A lawyer responding to document demands and interrogatories should not do so in an artificial manner designed to assure that answers and responses are not truly responsive or solely to attempt to avoid disclosure.

b. In a deposition, avoids repetitive or argumentative questions, questions asked solely for the purposes of harassment, or questions which are known to the examiner to be an invasion of the rights of privacy of a third parties not present or represented at a deposition.

c. In a deposition, bears in mind that depositions are to be taken as if the testimony was being given in court and a lawyer should therefore not engage in any conduct during the deposition that would not be allowed in the presence of a judicial officer. A lawyer should avoid, through objections or otherwise, coaching of the deponent or suggesting answers.

d. Meets and confers on discovery requests in a timely manner with opposing counsel, and makes good faith attempts to actually resolve as many issues as can possibly be resolved before proceeding with motions concerning the discovery. Before filing a motion concerning discovery or otherwise, lawyers should engage in more than a mere pro forma effort to resolve the issue(s).

e. As to document requests, a lawyer should: (i) limit requests for production of documents to documents actually and reasonably believed to be needed for the prosecution or defense of an action, and not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding; (ii) does not draft a request for document production so broadly that it encompasses documents clearly not relevant to the subject matter of the case; (iii) withholds documents on the ground of privilege only where appropriate; (iv) does not produce documents in an disorganized or unintelligible fashion or in a way calculated to hide or obscure the existence of particular documents; and (v) does not delay producing documents to prevent opposing counsel from inspecting documents prior to depositions or for any other tactical reason.

f. As to interrogatories, a lawyer should: (i) use interrogatories so as never to harass or impose an undue burden or expense on the opposing party; (ii) does not interpret or respond to interrogatories in an artificial manner designed to assure that the answers are not truly responsive; and (iii) does not object to interrogatories except when a good faith belief exists in the merit of the objection.

SECTION 7. MOTION PRACTICE:

Motions should be filed sparingly, only in good faith and when the issue cannot be otherwise resolved. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Engages in more than a mere pro forma effort to resolve the issue before filing a motion and, where appropriate, will certify in the motion the efforts to resolve the issue.
- b. Does not engage in conduct which forces opposing counsel to file a motion unless intending to oppose such motion in good faith or unless the relief sought affects the interests of the court or of persons or parties other than the lawyer's client.

SECTION 8: DEALING WITH NON-PARTY WITNESSES:

Dealings with non-party witnesses should be courteous and designed to leave the witness with an appropriately good impression of the legal system. Specifically, a lawyer who manifests professional courtesy and civility will have a copy of the Notice of Deposition, or substantial equivalent, served with a Subpena and will serve a copy of the Subpena on all counsel.

The lawyer should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings, or trial, and should further attempt to accommodate the schedule of witnesses when setting or resetting their appearance, and promptly notify them of any cancellations.

SECTION 9: EXPARTE COMMUNICATIONS WITH THE COURT:

Lawyers should avoid ex parte communications on the substance or merits of a pending case with the Judge before whom such case is pending. Where applicable rules or laws permit an ex parte application or communication to the court, before making such application or communication, an attorney should make diligent efforts to notify the opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of such attorney or party to permit the opposing party to be represented and should avoid taking advantage of an opponent's known absence from the office.

SECTION 10. CANDOR TO THE COURT AND OPPOSING COUNSEL.

- a. Lawyers should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel, and shall not mislead by inaction or silence. Written materials and oral argument to the court should accurately state current law and fairly represent the party's position without unfairly attacking the opposing counsel or opposing party.
- b. A lawyer should draft proposed orders promptly, and the order should fairly and adequately represent the ruling of the court. When proposed orders are submitted to counsel for approval, the lawyer should promptly communicate any objection to the party preparing the proposed order so that good faith discussions can be had concerning the language of the proposed order.
- c. A lawyer should respect and abide by the spirit and letter of all rulings of the court.

SECTION 11. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION:

In every case, a lawyer should consider and explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated, and if appropriate, mediation should be encouraged. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Advises the client at the outset of the availability of alternative dispute resolution.
- b. Does not falsely hold out the possibility of settlement as a means for adjourning or terminating discovery or delaying trial.
- c. Considers whether the client's interests could be adequately served and the controversy more expeditiously and economically disposed of at arbitration, mediation or other form of alternative dispute resolution.

SECTION 12. TRIALS AND HEARINGS:

A lawyer should conduct himself or herself in trial and hearings in a matter which promotes the positive image of the profession, assists the court in properly reviewing the case, and displays appropriate respect for the justice system. Specifically, a lawyer who manifests professional courtesy and civility:

- a. Is punctual and prepared for all court appearances.
- b. Always deals with parties, counsel, witnesses, jurors, respective jurors, court personnel and judicial officers with courtesy, civility and respect.
- c. Makes objections during a trial or hearing for legitimate and good faith reasons and does not make objections only for the purpose of harassment or delay, to coach witnesses or for other improper purposes.
- d. Honors requests made by opposing counsel during trial which do not prejudice his or her client's rights or sacrifice tactical advantage.

SECTION 13. PRIVACY:

All matters should be handled with due respect for the rights or privacy of parties and non-parties. A lawyer who manifests professional courtesy and civility cooperates in arranging for reasonable protective measures where privacy matters are at issue:

- a. Does not inquire into, attempt or use or threaten to use, facts about the private life of any party or other individual for purpose of gaining an advantage in a case, where not relevant to the specific issues, and where sensitive matters are relevant to an issue, will pursue such inquiry as narrowly as reasonably possible.
- b. Cooperates, if it is necessary to inquire into such matters, in arranging for reasonable protective measures